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Canadian Perspectives on the UNCTAD Code of Conduct for Liner Conferences: Proceedings

Sponsored by
Canadian Marine Transportation Administration,
Transport Canada
and
Research Branch,
Canadian Transport Commission

Montréal
May 12-13, 1982

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Research Branch
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FOREWORD

This document presents the proceedings of the seminar on the UNCTAD Code of Conduct for Liner Conferences, held in Montreal on May 12 and 13, 1982. This seminar was jointly sponsored by the Marine Administration of Transport Canada and the Research Branch of the Canadian Transport Commission.

On the vote which saw the Liner Code adopted by UNCTAD in 1974, Canada abstained. It now appears that the Code will come into effect in the near future, and that Canada has to review the situation in the light of this development. It was thought that a forum on the subject, where the various interested parties would be invited to express their views on the implications of the Code to them as well as on the options open to Canada, would make a useful contribution to this process.

From the standpoint of Transport Canada and the Canadian Transport Commission, the seminar provided a very useful and valuable input in considering the various options available to Canada. Hopefully, the proceedings will be useful to the various parties interested in liner shipping. It is for this reason that this document is being made publicly available.

The speakers at this seminar included representatives of shippers, shipowners, labour and government. The texts of their papers are presented in this publication. In addition, three panel discussions were held during the seminar in which all the participants had an opportunity to exchange views with the speakers. These panel discussions were recorded and the text in this publication was transcribed from the tapes.

Finally, a special word of thanks is due to the staff of Marine Administration of Transport Canada and the Research Branch of the Canadian Transport Commission who were responsible for organizing the seminar. Mr. André Pageot of CMTA and Mr. Burton Kelso of CTC Research planned the programme; Mrs. Gail Zahradnitzky and Ms. Karen Hecks of CMTA and Mr. Arvo Ray and Mr. John Gibberd of CTC Research were responsible for contacting speakers, registering participants, and taking care of the many details and arrangements involved in holding such a seminar.

G.M. Sinclair
Administrator (CMTA)
Transport Canada

Yves Dubé
Vice-President (Research)
Canadian Transport Commission

Canada

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DAY ONE, May 12

Chairman:

Mr. M. Brennan
Marine Deputy Administrator
Transport Canada

Session I: IMPORTANCE OF THE CODE OF CONDUCT

Overview and Major Themes

Mr. Y. Dubé
Vice-President (Research)
CTC

I would like to welcome you to this Seminar on the UNCTAD Code of Conduct for Liner Conferences.

Mr. Sinclair first approached me with the idea of holding this joint seminar last fall. It was felt that now was the appropriate time to hold such a conference since it appears very likely that the Code will come into effect within the next year. This seminar is intended to be a forum to provide information on the Code and to examine its implications for Canada's policies on shipping and related matters. It is hoped that what will emerge from this seminar is a good understanding of the various considerations which should be taken into account in defining Canada's position on the Code.

From my perspective as Vice-President (Research) of the Canadian Transport Commission, there is also the important purpose of identifying areas on which future research should bear.

As a forum, this Seminar is an occasion where all those with an interest in liner shipping, namely, representatives of shippers, shipowners, agencies, associations, labour, government and of the academic community, whatever their points of view, can come together to express their individual positions on the Code and listen and respond to the views of others. And, looking around this room, I am pleased to see that we have succeeded in attracting very knowledgeable people from all these fields, both as speakers and participants.

History of the Code of Conduct

Since we will be spending the next two days discussing the provisions and implications of the Code of Conduct, I think it would be both appropriate and useful at this point in time for me to say a few words about the history of the Code.

In the late 1960's liner shipping became an important issue for developing nations within UNCTAD. These countries wanted to develop their merchant marines and at the same time to increase their participation in the liner conferences carrying their trade. Furthermore, they also felt government regulation was necessary to exercise control over certain aspects of conference behaviour that they saw as being detrimental to their national interests. This latter view was also held by some of the developed nations.

In 1970 UNCTAD issued a report entitled, The Liner Conference System, and its Committee on Shipping, after considering this report, agreed that improvements in the liner conference system were required.

Developments, however, were also taking place in another forum. The European and Japanese Ministers of Transport known as the Consultative Shipping Group (CSG), in early 1971, requested the Council of European and Japanese National Shipowners Associations (CENSA) to develop a self-regulating Code of practice for Conferences in consultation with the European Shippers Councils. The result of the efforts of these two groups is what is commonly known as the CENSA Code, which was approved in late 1971 by the Consultative Shipping Group.

Since the developing nations were not invited to participate in the formulation of the CENSA Code, these countries were concerned that their interests would not be met in such a Code and thus they exerted pressures for UNCTAD to move ahead with the development of its own Code.

Draft Codes of Conduct were submitted for consideration by the developing nations at UNCTAD III which was held in April and May of 1972. These draft Codes called for government regulation of shipping conferences, whereas the CENSA Code supported self-regulation.

A resolution was adopted at UNCTAD III which called for the development of a government-negotiated Code of Conduct for liner conferences. This UNCTAD resolution was supported by a UN General Assembly resolution in December of 1972. Several preparatory sessions were held in the course of the following year and the Convention on a Code of Conduct for Liner Conferences was adopted on April 6, 1974. The Liner Code was supported by 72 countries, seven countries voted against it and five, including Canada, abstained.

While Canada was sympathetic to the concerns of the developing countries, it, nevertheless, abstained from the vote for three principal reasons. First, it was felt that shipper interests were not adequately represented. Secondly, the ambiguities that exist in the Code sometimes make its interpretation difficult or the evaluation of its implications practically impossible. Finally, it was felt that the Code's cargo reservation provisions might prevent or seriously reduce competition in the Canadian liner trades.

According to article 49, the Code would come into effect six months after 24 states with a combined world liner tonnage of at least 25% have become contracting parties to it. During the course of the following 4 years, only slow progress was made in moving towards the required tonnage figure. As of November 1978, 33 nations accounting for only some 6% of the world liner tonnage had ratified the Code.

The Code's prospects of coming into force, however, were greatly increased in May of 1979 when the European Economic Community adopted a common position which provided for a resolution of the conflict between certain provisions of the Code and the principles and objectives of the Treaty of Rome which established the EEC. Basically, the EEC proposed that the Code would apply to trades between the EEC and developing countries, but that the Code's provisions on trade participation, decision-making

procedures and the minimum period between general rate increases would not apply to intra-EEC trades and, on a reciprocal basis, to trades between the EEC and OECD countries which are contracting parties to the Code. Shipping lines of developing countries would be allowed, however, to qualify as third country carriers in these intra-EEC trades and the reciprocal EEC-OECD trades.

As I indicated earlier, it now appears that the effective date of the Code is imminent. As of March 1, 1982, 52 countries with just over 20% of the world liner tonnage had already become contracting parties to the Code. In addition, the Federal Republic of Germany introduced draft legislation to ratify the Code earlier this year and if it is passed then the required tonnage figure will be met.

An Overview of the Code

I would now like to give a brief overview of the Code. The Convention on a Code of Conduct for Liner Conferences consists of a statement of general objectives and principles followed by seven chapters. Chapter I presents the necessary definitions, including the concept of "a national shipping line" which is of crucial importance in the application of the Code. Chapter II deals with relations between conference members and covers such matters as admission, participation in trade (which seems to be the best known and perhaps most controversial provision), decision-making procedures, sanctions, self-policing and conference agreements. Chapter III focuses on relations with shippers and covers such things as loyalty arrangements, dispensation, tariff availability, annual reports and consultation machinery. Chapter IV deals with freight rates and treats such matters as criteria for rate determination, tariff classification, rate increases, promotional rates, surcharges and currency changes. Chapter V is entitled Other Matters, and covers such things as fighting ships and adequacy of service. Chapter VI deals with the whole subject of dispute settlement and introduces the concept of international mandatory conciliation. Finally, Chapter VII is concerned with administrative provisions.

These seven chapters contain a total of 54 separate articles, many of which will be discussed in detail in the papers to come. I would, however, like to make one observation before leaving this area, and that is, although much of the public concern has been with the trade participation provision of the Code, as can be seen from the foregoing description, the Code contains many other provisions with important implications which deserve attention.

Importance of Liner Trade to Canada and the Statistical Problem

I would now like to comment upon the importance of liner shipping in Canada's international waterborne trade. In 1979, 6% of Canada's overseas waterborne trade, in tonnage terms, was carried by the fifty or so liner conferences serving the country. Total liner cargo including non-conference traffic accounted for 12.7% of the trade. These figures, however, do not portray the true importance of liner services. If it were possible to estimate the value of cargo carried by liners, the portion of total trade shipped by liners would in all likelihood be considerably greater.

The problem of estimating the value of waterborne movements to and from Canada raises a subject of special interest to me because of my function as Vice-President (Research) of the CTC. The subject is shipping statistics.

Research Branch staff of the Commission and others, in attempting to carry out various economic studies in the area of Canada's deep-sea shipping, including the estimation of cargo values, have encountered serious difficulties because of insufficient data and the lack of reliability of existing statistics. Improvements, such as the use of the A-6 Customs form, have been introduced but much more remains to be done in various areas. Reliable shipping statistics are vital to making intelligent decisions on commercial maritime matters as well as government shipping policies. This information is obviously of great importance in any deliberations concerning the designation of national shipping lines or a Canadian merchant marine. In view of the foregoing, I would encourage you to also bear in mind the matter of shipping statistics during the proceedings of the next two days.

At this point, I would like to emphasize that the focus in the papers and discussions of this Conference will be on liner shipping and there will be little opportunity to discuss bulk shipping. I would be remiss, however, not to draw your attention to the fact that UNCTAD is at present considering ways to increase the participation of developing countries in bulk trades and thus the precedents set by the Liner Code may well lead eventually to the adoption of an international convention on bulk services.

I turn now to the seminar programme itself to outline the themes and topics that we will be dealing with today and tomorrow. As I stated earlier, the end result of the seminar should be the determination of the various policy options that could be taken on the Code and an understanding of the merits and weaknesses of each of the options. But before we can have an informed discussion of the options we must first examine in some depth the provisions of the Liner Code and their importance, the Code's economic and commercial aspects, the relevant regulatory and other institutional considerations that pertain to it and finally but not unimportantly its implications for foreign relations. The papers that will follow today and tomorrow morning will address these subjects and will provide the necessary building blocks of information to prepare a foundation for the discussion of options which is going to take place tomorrow afternoon.

The remainder of this morning's session will be devoted to some basic considerations regarding the Code of Conduct. Three papers will be presented. Captain MacAngus will examine the essential features of the Code. Mrs. Zahradnitzky will deal with cargo sharing and the patterns of Canadian trade. Finally, Mr. Romoff will look at the competitive environment in today's liner shipping market.

The afternoon session is presented under the theme "Economic and Commercial Aspects of the Code". The first paper, which will be presented by Mr. Daigle, identifies and then explores some of the economic implications of the Code. The next three papers will examine the potential

impact of the Code from the perspectives of a shipping conference, a shipper and a shipowner. These three distinct viewpoints will be discussed by Mr. Day, Mr. Turpin and Dr. Camu, respectively. The last paper of the day, which will be given by Mr. Nightingale, will present the practical experiences of Saguenay Shipping in operating under cargo sharing conditions.

Today's session will close with a panel discussion which will be chaired by Professor Sletmo. Participants at that time will have an opportunity to address questions to all of the day's speakers.

The first session tomorrow will focus on the theme of institutional issues on which three papers will be given. Professor Tetley will review the legal and regulatory framework in Canada which governs liner shipping. Mr. Cantin will examine some of the potential new institutional frameworks that might evolve. Finally, Mr. Lochhead in his paper will explore the possible impacts of the Code on shipper-conference relations.

The final paper of the morning by Mr. Heeney will bear on international considerations. The topic of his paper is the "Implication for Foreign Relations".

The four morning speakers will then form a panel to be chaired by Professor Ffrench.

The afternoon session is titled options and alternatives. In this session, Mr. Sinclair will first give an overview of the options open to Canada, as he sees them, on the Code. He will be followed by a shipper representative, Mr. Chidiac, a labour representative, Mr. Boyle, and a representative of the Canadian Shipowners Association, Mr. Pathy, each of whom from their perspective will present their viewpoints.

The day and seminar will finish with a panel discussion chaired by Professor Heaver. At this time, participants will have the chance to question the four speakers on the views they hold regarding Canada's options on the Code.

I would like to conclude my talk by expressing the hope that all of you will find this seminar both interesting and useful. During the next two days you will hear thought-provoking papers and have the opportunity to exchange views both informally and in the course of the panel discussions. I personally am looking forward to the stimulating presentations and discussions which we are going to hear.

Essential Features of the Code

Mr. J.L. MacAngus
Director
International Maritime Transport Branch
Canadian Transport Commission.

Thank you very much, Mr. Chairman. Indeed, you've set up what in other countries might be a very convenient alibi for "getting rid of" a speaker. If I do disappear, I hope that we have a sufficient number of witnesses here that can go to that eminent organization in London which traces missing people. What we will hear perhaps should provoke us, because I think the whole purpose of this kind of seminar is to present not only the facts and figures of the subject that we're addressing, but also the underlying themes and rationales, which do call for a certain amount of cogitation and reflection and argument. And, God knows, over the years there's been a sufficient amount of argument over the UNCTAD Code of Conduct to satisfy even the most tendentious of us. There's been argument ad nauseam, one can say, over the Code, most of it ill-conceived I must admit to believing.

Our chairman has said, in fact pointing his finger at me, "When the Code of Conduct was adopted, John MacAngus was there". I feel like one of those characters at the turn of the century who went to Egypt with a party and dug up the great pyramid of Cheops was it not, or Tutankhamen's tomb and, having desecrated this tomb, one by one the members of the party have disappeared. I look around me. I think I'm the only fellow from Canada who was at that conference in Geneva at which the Code was adopted! I'll leave that thought hanging in the air....

However, this morning we are to speak about the importance of the Code of Conduct. Obviously it is important and, in particular, I have to address its essential features.

Well, it's worthwhile to place the provisions of the Code in the perspective of its origin. It's a convention which has been developed in the UNCTAD. Now, I think everybody has his own view of what the UNCTAD is. It's been developed on the initiative of third-world countries, in that part of the U.N. system, which caters quite specifically to their needs in trade and development. So, I don't think, in looking at the Code, you should look for those kind of comforting features of reinforcement of the status quo, which a convention conceived in a more traditional place, a more traditional part of the U.N. system, would have produced. This has been produced in a place which caters to the developing countries, who for some time now have been saying, "Hey, if you're carving up the pie, we also would like our share."

Some aspects of the third world's needs deal with the putting of bread in the mouths of hungry populations. I think we can all support that. It's a very laudable objective. But the Code of Conduct doesn't deal with that. It doesn't deal with putting bread in the mouths of starving millions. It deals with the sharing of power and privilege and money between

groups of people, who in their own right, and in their own places, are rich and powerful.

The ship owners, I think, have been categorized by that man who built the round structure down here in Montreal, an eminent architect, Buckminster Fuller, a name that's ever on my tongue. Buckminster Fuller has categorized the present day ship owners, I think, in a book. He's called them the last of the great pirates. And, they are based not only in London and New York and Paris, but they also have hideouts in Bombay, and Jakarta and all of these interesting places in the third-world countries; and they would like "their" share too, and that is what the Code is about. Like it or lump it, that's what it's about, in my view.

Now, any consideration of the importance of the Code to Canada has to take into account not only whether or not the specific provisions will apply to some or all of the liner conference cartels which serve the Canadian trades. You can't look at the Code and give a reasonable weighted judgement, if you look only at what is going to happen in our own backyard. It is not likely, in my view, that very much will happen in our own backyard as a direct result of the Code coming into effect throughout the world.

I say this for two reasons. One is, and I think perhaps the most pertinent, that we have seen our major trading partners decide to create what you might call a maritime free trade zone. "We won't apply the Code amongst ourselves," says the European Community, "and we won't apply it in those trades where other countries, at the other end, don't apply it". Well, that takes account for a large chunk of our trade with the European Community. We don't know what the Japanese are going to do yet, whether they also will put in that kind of provision, but, if we look only at that amount of our liner trade, the conference trade, which goes directly to the third-world countries, it is minuscule. Therefore, even if the Code is imposed in those trades from the other end, the direct effect will be fairly small. That is one reason why I think that we are not going to have a cataclysm in our own backyard.

The other reason is that there is very little in the Code which fundamentally attacks the system of conference cartels in shipping. If anything, the Code gives to these cartels the respectability, at world and global level, which perhaps they should have been seeking on their own initiative over very many years. We've seen, perhaps, in the development of the CENSA Code, something which should have been developed decades ago, but which hasn't; which perhaps has come a little too late. It would perhaps be more convincing as a voluntary act if the CENSA Code, and the attendant side agreements to the CENSA Code, between the cartels and the shippers, which have been developed in Europe, between CENSA and the European Shippers' Council, if those side agreements were given effect in other parts of the world, voluntarily, by the conferences. But they're not. And so one has to ask whether, in fact, the belated attempt by the conference system as a whole to show its more pleasant side, and it has a pleasant side, could not be made a little more persuasive if it was to be made a little more broadly based than just as a very comfortable in-house reinforcement of the status quo in Europe.

I think perhaps to look at the tangible influences of the Code only in the narrow sense of the effect in our own backyard, is to run the risk of overlooking its true importance. It's a milestone! The Code itself, the adoption of the Code in the U.N. system, is a milestone! It marks the recognition in the developing countries of the third world that ocean shipping is a vital activity. This has always been recognized as such in the developed industrialized countries, with the exception perhaps of our own where ocean shipping is very much of an orphan. I think, probably, here in Montreal I can say that.

There's probably an audience in Montreal sympathetic to the view that ocean shipping is a bit of an orphan in Canada. I would run the risk of being tarred and feathered, I think, in Vancouver, if I were to say the same thing. But here in Montreal I believe that there is a feeling that, in Canada, ocean shipping activities by, for and about Canadians, are running a poor second to other concerns.

To the third world itself, the development of the Code has been heavy with symbolism. In U.N. political terms it's been one more element put in place toward a new international economic order. You may well have heard of that; if you haven't yet, you will. It is coming, they say, slowly but with the inevitability of slow progression. What adoption of the Code has done is to show that the economic rules in ocean shipping are no longer to be dictated by one of the parties consistently to the disadvantage of the other. Where you have two parties, you have the carriers organized into a cartel and you have the shippers who are fragmented. It is fairly easy for the cartel to say: "This, and this, and this, will be the rule and you gentlemen will pay up and look pleased about it."

I think the adoption of the Code has responded: "We've seen enough of that; you're going to have to come to the table; you're going to have to discuss between the carriers and us, your clients, how the system is going to be run." Like it or lump it, that's what the Code says. The cartels may not agree at the end of the discussion, but they are going to be forced to discuss it, because the governments of the third world are going to insist. Government is going to be hovering there in the background. Although government is not going to jump into the front rank and hold that discussion, and provoke it, it is going to be there, and going to ensure that the cartels will have to come to the table." And a cartel, of course, is always, remarkably, the association of foreign carriers; because it's the spectre of decisions taken abroad which rouses the xenophobic impulse that we all have, even in Canada.

So, for the third world, the Code is a fine and splendid thing from the viewpoint of the developing countries. From the opposing viewpoint, that of the traditional maritime countries, it has not seemed to have been an instant success. Nevertheless, with the passage of some time, almost a decade, almost all of the critical voices have been stilled in Europe. I dwell on what is happening in Europe, because the bulk of our trade is with Europe; the way the Europeans go is indicative very often of the way reluctantly we are dragged along. In fact, all of the European Common Market countries are going to ratify the Code almost in the immediate future, within a year or so perhaps.

They're to ratify the Code while making a common reservation to the cargo sharing and the freight rate freeze provisions of the Code, in the trades between themselves, because that is the only kind of reservation that they can make stick, one that they mutually will accept between themselves. That kind of reservation will not stick in their contractual convention relationships with other countries who will have nothing of it. The non-application of these provisions, cargo sharing and freight rate freeze provisions, is also offered to other OECD countries, and even socialist countries or developing countries perhaps, who similarly do not apply those particular provisions of the Code. A sort of maritime free trade zone, it might appear to be.

If these two aspects of the Code, the cargo sharing and the freight rate freeze provisions are important enough to merit a formal reservation by the European Community, are they then the heart and soul of the convention? It could be, but I rather doubt it. It's more likely that the European reservation is only cosmetic, as some people have already claimed, to bridge the gap between the European Community countries and to allow even those community member countries, who voted against the Code (if you can imagine somebody rabidly casting a negative vote, that's the way those negative votes were cast), to allow them to eventually accept it. They're going to swallow their pride with the sugar coating of a formal reservation. Whether they believe that the Code is going to be applied to their detriment is another thing. I think perhaps not.

In the Canadian context, it is difficult to see truly fundamental issues being raised in the liner conference trades by the application of the UNCTAD Code of Conduct, with or without the European reservation at the other end of the trades. I don't think that it would make a hill of beans of difference in the fundamental sense, even if the Europeans did not have that kind of reservation, in the way that the conferences serving the Canadian trades would go.

When I was asked by the seminar organizers to give an exposé of the provisions of the UNCTAD Code, I was somewhat puzzled. After all, what the Code provides is right there in the text. It took me some time to realize that what was really needed is an account of the major features of the Code, but stripped of the economic graffiti which usually accompanies these kinds of explanations. Economic graffiti, that's a marvelous phrase to describe what the economists are doing to us in respect of the Code. The kind of clarifications we get usually drive the reader to paroxysms of horror, loathing and disgust. People get very emotive when the Code is mentioned. These emotional tides, as I have discovered by dint of protracted research, are provoked by a number of demons. The average demon, as you probably know, responds to the mention of his name somewhat along the same lines as your genie in the bottle. The names of these demons have been hidden with fiendish ingenuity right in the text of the Code. So, even a simple reading of the Code or casual conversation about it leads inevitably to the naming of these demons, and the inevitable manifestation of visceral emotions. Such is their power. I have seen otherwise placid and respectable people, people who don't even own a ship or never shipped a ton of cargo across the ocean, lash about themselves, over the issue of the Code, and the disaster that they claim the Code will bring in its train. Such is the overall nature of the phenomenon.

Now, with your consent, because we are on ticklish grounds here, I will name the demons that inhabit the Code. Before I do so I would like to give credit where credit is due. All of these demons, in one form or another, have been brought to your attention if you read the popular press, the trade press, financial press and other ways we get our information. All of these demons have been brought to your attention. You've been inundated over about a decade now with all of the things that are bad about the Code, not only all of the things that are bad about the Code, but many of them fabricated on a basis of what the Code in fact doesn't provide. And you've been inundated with them.

Now, I'm really not a "codist". Codist, that's the term of the people who support the Code, and the anti-codists are the people who are unalterably opposed to the Code; except in the case of European governments which have the liberty of changing their mind half-way through even when they were violent anti-codists at one time.

The fundamental purpose of the Code is to provide an agreed framework within which the liner cartel (and I use the word "cartel", that's an emotive word and that has several demons attached to it), the liner cartel will deal in the open with its clients. Cartels really are not bodies which voluntarily come out in the open, whether they deal with shipping or uranium. Henceforward they'll deal in the open with carrier members or prospective members, with the shipper clientele, and with government (there's another demon!). I've seen people foam at the mouth at the prospect of governments enquiring into what's going on in shipping. "What's going on in shipping?" "Mind your own damn business", they say. "Government out" ...And it's worse on the west coast!

In order to achieve this kind of effect, the initial parts of the Code assign rights to national lines, rights of equal participation in a bilateral trade organized by foreign carriers into a closed cartel. You can see demons popping up all over the room at the mention of that! That's our first volley of demons. I doubt there's a person in this room who feels neither offended nor abused by that prescription. Rights to national lines! My God, what will they think of next.

And, secondly, the right of third flag carriers to a viable share of the trade, such as twenty percent. Such as twenty percent! I've seen strong men blench at the implication that the major part of the national trade might be carried equitably by national lines at each end of the trade, leaving a viable portion to third flag carriers. My God, they say, it is the inalienble right of third flag carriers, provided they're of the "right" third flag, to carry all of that. You fellows don't need to have shipping lines. Good God, you'll lose your shirt on that. "Let us lose our shirts on your behalf", they say; in a closed cartel with its headquarters in a jurisdiction that won't let you drag them into court. Which is the way that it should be perhaps....

These two provisions of themselves are the most misquoted and the most abused of all of the Code's provisions. You've heard more about those two provisions of the Code than you have about anything else. That doesn't mean to say that the text of the Code, the rest of the text, is not littered with other demonic manifestations. It is!

Within the Code, to set things straight, there is no linkage between conference membership rights and the rights to participate in the trade. You would believe, if you believe the press, that there was an inextricable linking between the conference membership rights and the rights to participate in the trade. But there's not, in the Code. You read it sometime, I've read it several times. I've argued about it more than I've read it, I'll grant you.

Taking membership, the cartel can't refuse to admit a national line without an explanation. With an explanation, they can tell the national line to go to hell; in more diplomatic language, it's right there in the Code. It will have to give the explanation in public. If you can imagine the closed foreign-based cartel that would be so insensitive in its explanation as to publicly refuse a reasonable bid for membership from a national line of a developing country. Can you believe that a cartel would do that? No, of course it wouldn't. And that really is part of the purpose of the Code, is to say, "All right cartel, come out in the open. Tell us. Tell us, the national shipping line of Ruritania. One ship. Miserable old broken-down rust-bucket." And they've found a shipper that has agreed to put some cargo in there, low-rated cargo, but they'd like a little share of the refrigerators coming out of the industrialized countries, and the cars, and some of the high-rated cargo, some of the good stuff, just to fill her up you know, and show willing. Then they go to the cartel and say, "We're the Ruritania shipping company. We would like to become conference members."

Right now, in a closed boardroom, ten thousand miles away, they would fall off their chairs laughing. "Ruritania shipping company, a member of this conference? Never. We will die first." In Ruritania they will: they'll die first, until the message is driven home to the rest of the cartels. The message will be driven home to them by the government acting as a friend to both parties. "We're friends to the shippers. We're friends to the carriers. To show how much we are friends to the carriers, we will persuade you that the Ruritania shipping company has all of the attributes of the kind of member line that you most want in your conference." That is the way it will go. Friendly persuasion. It may not be a bad thing you know.

It may not be a bad thing at all in the service of world trade to see a reasonable proportion of it being carried in ships that belong to rich and powerful men also in these other parts of the world, because nobody supposes that widows and orphans own and operate ships. I don't suppose it. I don't suppose that you suppose it. We're dealing with the rich and the powerful.

Now, on the point of cargo sharing, that's another major demon. Can I say right here and now, and my age and infirmity may not allow me to say very much more, and besides it is coming on towards coffee time, the Code of Conduct does not say there shall be cargo sharing. It doesn't say there shall be cargo sharing. You believe it does say that. It does not. Now, I have alienated the audience. "My God, where's that coffee?", they're saying. But the Code of Conduct does not impose cargo sharing. Nothing in the Code of Conduct says there shall be cargo sharing. Further, and this fringes on heresy, the Code does not say that cargo shall be shared 40/40/20. In fact, what the Code says is that there shall be no cargo sharing by the members of the cartel, unless the national lines at both ends

of the trade agree, which is a far cry from the decision by a foreign-based closed cartel of shipowners that there shall be cargo sharing, isn't it? It drags it right out in the open, right down to the local level. "You fellows can't share cargo unless you bring us in here in the trades that are affected. Here, in Ruritania, we want to know about this before you start carving up our cargo and sharing it amongst yourselves." But then, when the national lines at each end of the trade agree, they can agree on whatever proportions they like. As long as there's an equal entitlement, to the national line at each end, the take could be five percent. Five percent, five percent, ninety percent. How about that for sharing?

We've seen the effects of some of the non-Code bilateral agreements on cargo sharing. We've got the example of the US/USSR, bilateral: one-third US, one-third Soviet, one-third third flag. I think the figures on that were that the national lines at each end, this was in the bulk trade it's true, but the same principle holds, the national lines were carrying no more than about fifteen percent each, 15/15/70. So, there is nothing magic about that 40/40/20. It is a snare and a delusion, and it's been put in your mind by demons buried in the text of the Code! The national line at one end can't even impose cargo sharing. It has to be a decision taken jointly by the national lines at each end.

Now, Mr. Chairman, I'll throttle back some of the other pearls of wisdom that I was going to cast at you. Perhaps there will be a chance of private conversations over the next couple of days with those of you who believe that what I've had to say so far is worthwhile, or if you think it's a hoot, I'll be happy to accommodate whatever arguments there are that don't lead to actual physical violence. Short of physical violence, I'm willing to argue the hind leg off a donkey.

I want to thank you very much for your kindness in listening to me; the audience, the kindness of our chairman, and the organizers of this conference who have given me an opportunity to chew the fat a little on this subject, one that I've been involved in for over a decade, and which, as I learn more and more about it, I understand less and less.

Thank you.

Cargo Sharing and Recent Patterns in Canadian Trade

Mrs. G. Zahradnitzky
CMTA, Transport Canada

Because of the heated emotions that are generated by the cargo sharing provisions of the Code, I have been asked to talk about cargo sharing and recent patterns in Canadian trade.

Some people have argued that adopting the Code endorses and encourages cargo sharing on a non-commercial basis. Others argue that the Code's adoption will discourage more heinous forms of intervention in the market. It is very rare that someone will argue that the Code's adoption will have little or no impact on the broad shipping market.

If there is an impact on the Canadian shipping market, how great that impact will be depends largely upon:

1) How many countries adopt the Code;

2) How various countries will interpret and apply article 2;

3) How significant are other measures which intervene in the market and ensure a level of participation for certain lines.

In this presentation, I shall note the extent of adoption of the Code. I shall then focus on governmental intervention in the market place. I am not going to act as a soothsayer to predict how various countries will apply the Code.

When looking at the number of countries which are contracting parties to this convention, one must remember something. The Code applies only between contracting parties. As long as Canada is not a contracting party, the Code per se will not apply in Canadian trade. This does not, however, prevent another country from attempting to implement provisions of the Code to our trade.

As you will be reminded repeatedly over the next day and a half, the Code is not yet in force, despite being formally accepted by 52 countries (as of March of this year).

We have prepared this overhead (See Figure 1) to show the geographic distribution of countries that have definitively signed, ratified, or acceded to the Code...(Please do not check our boundaries too closely as we prepared this only to provide a general impression of the extent of the Code's application if it were in force today)...

In looking more closely at the Code you may wish to keep in mind the significance of Canada's trade to these countries. It is about 14% of Canada's total seaborne trade. (See Figure 2).

Figure 1

While the EEC members will become contracting parties to the Code shortly, this need not have a significant impact on Canada. As long as Canada is not a contracting party, the EEC members would not apply the provisions in our trade with them. Moreover, on a reciprocal basis, the EEC members will not apply the cargo sharing provisions to contracting parties which are members of the OECD.

It thus appears that the application of the cargo sharing provisions of the convention would directly affect a small portion of Canadian trade if it were applied today. However, they could directly affect a considerable portion of this country's trade in the near future. This would particularly happen if Canada become a contracting party without accepting the EEC reciprocal formula.

I believe that Mr. Daigle will discuss some of the indirect economic impacts of the Code; therefore, I shall not address them here.

Now let us turn to the contentious issue of how significant other measures are which intervene in the shipping market.

There have, over recent years, been different views about whether intervention by foreign governments to ensure cargo for their carriers has had a significant effect on Canadian trade.

Those individuals supporting the Code, or some other form of Canadian government intervention in shipping point to the growing number of countries that have adopted such measures. They claim that Canadian interests are being affected and that measures must be taken to limit or offset the impact.

More numerous are those who take the opposite stance. They claim there is no need for Canadian government intervention. Further, they claim there is little evidence that such intervention affects a high percentage of total Canadian seaborne trade. They believe that "free and fair" competition provides Canada with the cheapest and best quality shipping service. Consequently, they resist any thought of controls by the Canadian government and the cargo sharing provisions of the Code because of fears of how it may be interpreted and applied.

In weighing these opposing viewpoints, I went through the information available on our trading patterns, and on the policies and laws of other countries. I drew extensively from Statistics Canada data and from comprehensive studies undertaken on international shipping by CTC Research. I supplemented this with information available in my own Branch and in the Water Committee of the CTC.

I compared the extent and nature of foreign government intervention and Canadian trade patterns.

There is statistical and other evidence supporting each viewpoint.

Taking each viewpoint in turn.... First let us look at government intervention to affect shipping shares by their national line.

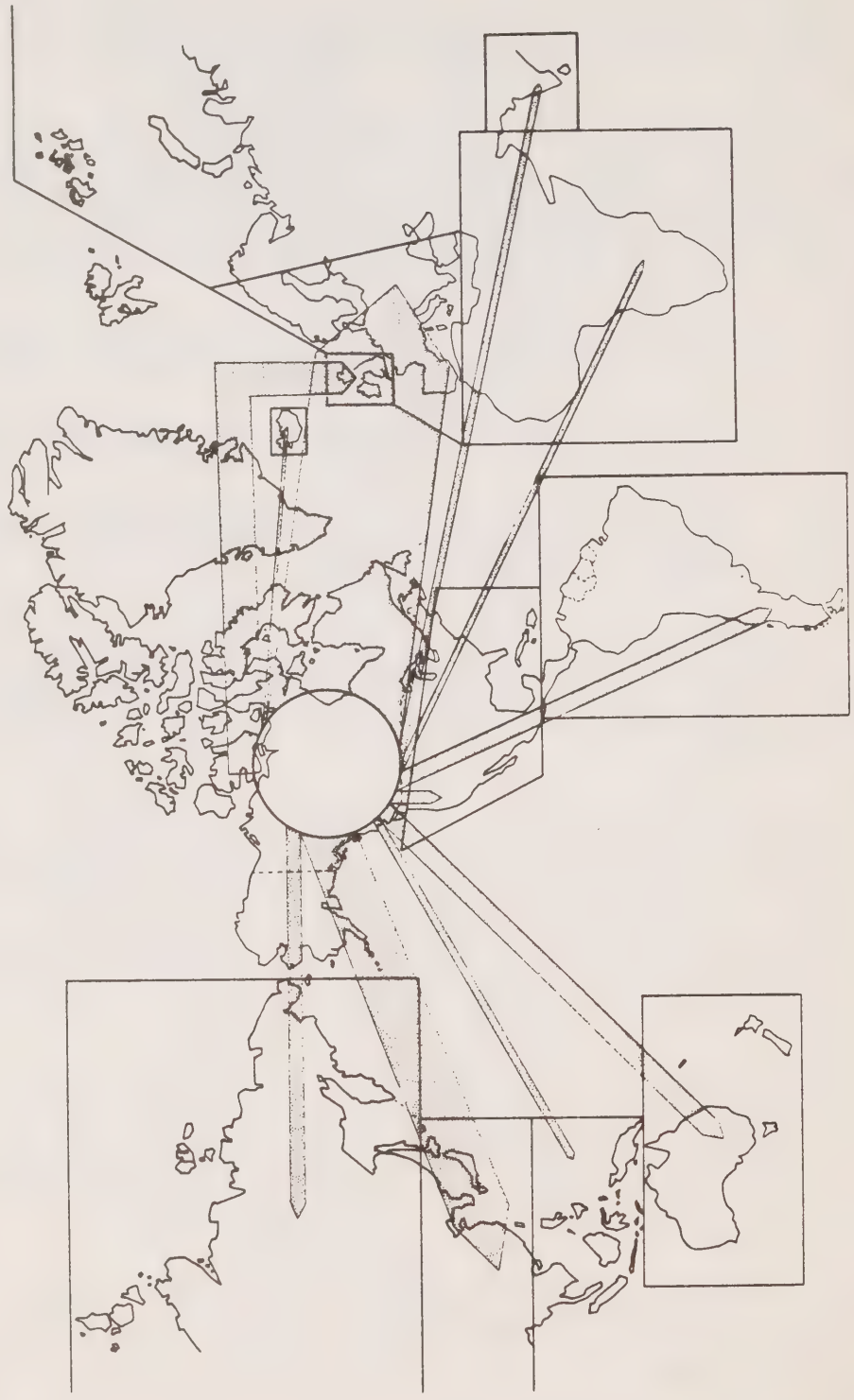


Figure 2

There is a formal acceptance by many countries in the world of the principle that national lines have the right to participate, at least to some extent, in their country's trade. Many of these have actually implemented policies designed to ensure a certain share of their trade is transported by their national lines. We have identified over forty-five countries which have some form of recognizable practices related to direct reservation of cargo to their national lines. This is established through unilateral laws or decrees, or through bilateral or multilateral agreements.

Many of these countries have adopted forms of reservation which would apportion trade on the basis of 40-40-20 : 40% going to their national line; 40% going to the line of their trading partner; and 20% going to third country fleets. In other words, they have adopted a division like that provided as an example in article 2 of the Code of Conduct.

We have identified over a dozen developing countries which reserve 40% of either 1) all their trade, 2) certain categories of their trade, or 3) their trade on certain routes. We have further identified more than 25 developing countries that reserve 50% or more of either 1) all their trade, 2) certain categories of their trade, or 3) their trade on certain routes.

In addition to these reservation practices many of these countries have instituted policies relating to access to cargo or to ports and services, and policies relating to trade financing which favor their national lines. In the former category are such practices as import licences favoring the use of national flag vessels (e.g. Sri Lanka) and lower bunkering rates (e.g. Saudi Arabia) and different port fees (e.g. Peru). In the latter category are such provisions as exemption from freight or transport tax for national lines (e.g. Tanzania), and special tax deductions for use of national flag shipping (e.g. Philippines).

In addition to the actions by developing countries to support their fleet development, there are policies of communist countries which control exports and imports mainly through a CIF selling and FOB buying policy and by using this "terms of shipment control" to arrange shipments by national flag lines.

Some developed market economy countries have entered into bilateral agreements which have cargo sharing clauses. Such agreements are, however, with developing or communist countries and are undertaken on the basis that these agreements protect their shipping lines in their trades from exclusion by the policies of other countries (e.g. France/Ivory Coast).

There is no evidence to date that there are restrictive, cargo-sharing, or flag preference policies being applied in commercial trades between OECD Nations. Such actions would be contrary to the OECD Code of Liberalization. (See Figure 3).

If I project a map of countries practicing some form of policies of preference for their national shipping and superimpose the map showing the countries which are currently contracting parties to the Code and if you then imagine the EEC countries also being shaded (as they would be once they complete enabling action to make them contracting parties to the Code), you will see that a considerable portion of the world is under governments which

Figure 3

accept some special status for their national lines in at least some trades. (See Figure 4).

Now you may be thinking quite correctly that this exercise is somewhat misleading since not all the countries shown as intervening on behalf of their national carriers are equally committed to the practice. Some have special levels of intervention for certain classes of cargo and/or certain commodities. Thailand, for example, has required that state controlled goods be carried in national flag vessels and that certain goods must be imported in Thai ships or be subject to double duty.

Other countries only intervene in shipping in selected trades. This, as I noted a moment ago, is true of OECD countries.

We do not have trade flow information for other countries that is sufficiently detailed to allow us to judge what percent of world trade is moved under intervention from foreign governments. Nonetheless, I think the case is made that government intervention to affect the share of cargo attained by national lines in their trade is a fact of life.

Now let us look at the countervailing argument that this government intervention has little effect on Canadian trade.

Canada, as you know, has no intergovernmental agreements either in existence or currently under negotiation which would influence the market share acquired by the vessels of any country.

Cargo is moved, as we all know, between Canada and countries which intervene in the shipping market. The examples of difficulties experienced by shippers or carriers in these trades which have been brought to the attention of the Canadian Government by commercial interests are few in number. All but one have been in Canadian - Latin American trades. The exception was in trade with South Korea.

The impact of intervention by foreign governments in the selection of carriers for carriage of Canadian trade may well be far greater than is represented by these complaints.

Let us take a look at the overall picture. It is fair to say that OECD governments do not interfere in the shipping market with respect to Canadian trade. It is also fair to say that some developing countries have interfered in our shipping market. And further it is fair to say that socialist countries channel trade to their own fleets whenever possible. Thus, it is interesting to look at Canadian trade broken down into these three blocks.

I prepared some statistics broken down on this block basis, and these confirmed the dominance of the OECD as our main trading block. Only a third of our total trade is with countries that intervene in the shipping market.

Such statistics as are published are quite dated. 1980 data is only preliminary, and 1979 data has not been fully analyzed on a conference and non-conference basis.

Figure 4

In 1979 trade with OECD countries accounted for 77.8% of the total, with socialist countries for 2.6%, and with developing nations for 19.6%. (See Figure 5).

It would be useful to know the degree of impact of countries currently practicing some intervention in shipping, one should analyze each trade separately to determine what volumes and value of cargo went by the vessels of our trading partner which would not have gone there as a result of normal commercial forces.

However, even with a thorough trade by trade analysis, it is impossible to reliably quantify how much, if any, impact is felt in Canadian trades from the intervention of countries practicing interventionist policies. This is true for three reasons:

1) The fact that a country has evidenced support of interventionist policies as shown by its laws, decrees, or agreements does not mean that these policies are applied in all trades including trade with Canada. The policy may not be applied in Canadian trade because of a need to compete for the commodity market, or because of a lack of sufficient number of vessels to cover operations to this country. (An interesting example of this is noted in one of the CTC studies. It was discovered that one country reserved government and food-product traffic to a line which had not yet been established).

2) The country which has established interventionist policies may have a national line which could have obtained the same shipping market share on a purely competitive basis - without help from the government.

3) There may be unwritten policies and practices which are difficult to document but nevertheless affect market shares in favor of our trading partners national line.

Despite this caution, I totaled Canadian traffic to and from non-OECD countries which we have identified as having intervened in shipping. Their trade represented approximately 35.1 million metric tonnes or 17.6% of Canada's total.

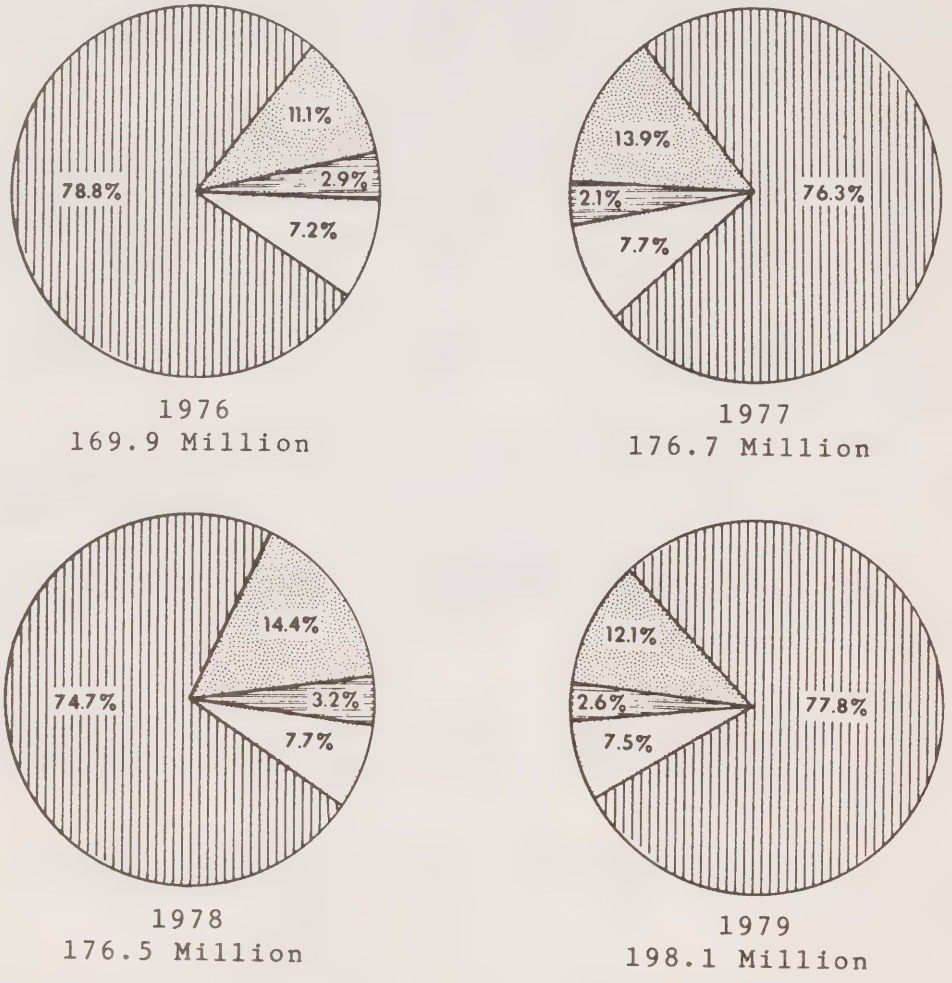
Thus there is evidence that foreign countries have not, in aggregate tonnage terms, had a significant affect on Canadian trade in recent years.

Those who argue that the intervention by foreign governments is significant tend to point to the trend towards greater intervention in all shipping - liner conference as well as non-conference. The evidence of the intention on the part of developing nations to acquire an equal share of sea-borne movements is clear. For example, when asked what they meant by "equitable" in the resolution on bulk shipping that they voted in at the 5th session of the United Nations Conference on Trade and Development, their co-ordinator and spokesman indicated they meant "equal". All developing nations voted for this convention.

Those who feel that intervention by foreign governments is not significant point out that most Canadian trade will continue to be with

Figure 5

DISTRIBUTION OF INTERNATIONAL SEABORNE
SHIPPING WITH UNCTAD GROUPS
(Metric Tonnes)



developed market economy countries. They argue further that most developing nations can not afford the capital investment required to carry 50% or more of their seaborne trade. They also argue that access to market for their exports is more important to countries than is the carriage of their trade in their fleet.

There have been no comprehensive market projections tied to projected intervention policies that I am aware of. Thus, the significance to Canadian trade of intervention in the future is purely speculative.

In summary.....

1) The degree to which the cargo sharing provisions of the Code will affect Canada will be determined in part by whether Canada becomes a contracting party to the convention and if so, on what basis. It will also be determined by the interpretation and application of this provision by other countries.

2) Whether or not Canada becomes a contracting party to the convention, intervention by foreign governments is affecting the shipping market. The extent of the impact is limited. The future is uncertain. How significant this intervention is remains a debated subject.

In conclusion..... There are two fundamental questions which we need to address with respect to cargo sharing:

1) How much intervention by foreign governments affecting cargo shares do we continue to allow to occur before we consider the level significant enough to justify a government response?

2) Is the adoption of the cargo sharing provisions of the Code in some or all of our trades an adequate defence mechanism if one is justified?

In addressing these questions, I think that we need to keep firmly in mind that foreign intervention takes various forms and degrees depending on the trade.

Changes in Liner Shipping and Its Competitive Environment

Mr. H.M. Romoff
Managing Director
Container Services Division
CP Ships

Thank you very much, Martin.

It is indeed a pleasure being here, and I must say I much prefer the introduction that you gave me to being called "one of the last great pirates", but we'll come back to that point later.

I should perhaps begin this rather brief talk by talking a bit about my biases. I guess you know I work for Canadian Pacific, and also that all people must have biases. My responsibility is for the International Marine Container business at Canadian Pacific. We trade under the name of CP Ships, and we operate a container line between Western Europe and Montreal. We're also about to become involved in a similar type of service between Western Europe and the U.S. east coast. We do belong to those organizations which I prefer to call "Conferences", being a non-emotive word, and again I shall be speaking of that point a bit later. The complication, of course, is that Canadian Pacific has always operated its shipping business from the UK under UK flag.

So, I'm here today as a representative of a major Canadian company operating a shipping business from the UK, which both serves Canada and is also a cross-trader between Western Europe and the U.S. east coast. Now, if that gives me a bias, I must frankly say I don't know what it might be.

The UNCTAD Code is clearly both a topical and important subject. As we've heard before, it will no doubt be implemented rather shortly, perhaps this year or next. If I may repeat what has been said several times today, the implementation of the UNCTAD Code will not make a major impact upon the liner trade to and from Canada. It certainly will not be an issue which will dominate, in my view, discussion of Canada's maritime policy. Indeed, if one were to compile a list of the important issues facing Canada's maritime policy makers over the next five years, or ten years, I would not be afraid to suggest that the subject of the UNCTAD Code would rank fairly well down this list. Most of our trade is with the United States, and with Western Europe; that is to say with parts of the world which will not be parties to the Code, insofar as our trade with them. I think it is very important to understand this background. While this seminar may be dealing with a very important topic, we shouldn't take ourselves with too much seriousness, or importance.

The topic I've been asked to address is entitled "Changes in Liner Shipping and It's Competitive Environment", a topic which goes well beyond the Code in its implications. I presume my function is to give some

background, some perspective, and perhaps be more of a complicator than a simplifier. I see my role as standing back a bit and describing what's been happening to liner shipping, why it's been happening, what's going on now, and perhaps what might happen over the next five years or ten years. In this context, I will presume to say a few things about the Code and its impact upon Canada.

It is worthwhile to ask a preliminary question, which is a very important one. We've heard that the UNCTAD Code was adopted in 1974. It didn't spring up newborn in 1974 but rather it reflected pressures, studies, meetings, committees, what you will, which began in the late 1960's. It is beyond question that the Code reflects an approach to the world, an appreciation of world liner shippings, which is really appropriate to the early 1970's and late 1960's rather than the 1980's. I think we have to ask ourselves very carefully whether, in this context, a Code which is ten years old almost, whose background goes back at least fifteen years, is really all that relevant to the world of the 1980's and even more importantly to the world of the 1990's. Now again, that's a question I'll try and come back to later, but I think it's a good focal point for this entire seminar.

I would like to break my remarks down into four general categories; the external environment facing liner shipping, the organization of the industry, the competitive environment and the political-cum-regulatory framework of the industry.

Beginning with the external environment, one must point out at the outset that liner shipping to and from Canada is not one of the world's boom industries. It is not expanding at ten percent a year compound; it certainly is not doubling in size every five years. To the contrary, at this point of time its growth is quite slow, erratic and uncertain; some would call it stagnant. It's hard to get good numbers on liner shipping because people don't keep numbers that way. Such numbers that do exist, for example forecasts put out early this year and late last year by Transport Canada, would seem to suggest that liner trade in and out of Canada between 1978 and 1990 will grow by approximately half a percent per year on average, compared to growth in total marine trade in and out of Canada of perhaps four percent per year. The four percent seems sensible; the half a percent makes me very nervous. But it is a trend that goes beyond Canada. It's a trend that pervades most of the industrial world, where liner cargo growth has been very slow, very stagnant, very uncertain.

One can speculate why this has been the case, but I'm afraid it can't be much more than speculation. Certainly in the case of Canada, our trade is dominated by bulk products, and much of the growth has been, and will be, in bulk products. Again, with regard to Canada, most of our merchandise trade is with our neighbour to the south of the border. It always has been so, it always will be. Therefore, the impact on marine transportation of trade in manufactured goods is not very large. Thirdly, one can speculate that as trade has grown, what was once general cargo and liner cargo has now become so-called "neo-bulk" cargo, to employ a word that's been used more and more. Whereas ten years ago automobiles, for example, moved around the world as general cargo in liner service, now they move around in great big automobile carriers, dedicated and specifically built, to the trade and no longer part of the liner trade. There are many

such examples where, when trade becomes large enough, the cargo shifts from the liner category to the bulk category. But, whatever the reasons may be, I think the important point is that growth in liner trade in Canada has been slow and will likely remain so. It is not a boom industry.

The second point to make with regard to the external environment regards technology. This is terribly important, because over the past ten or fifteen years, the advent of containerization has really transformed the liner trade from one that was labour intensive, low technology, port to port, to what is now very capital intensive, high technology, door to door.

Indeed, numbers I've seen indicate that the capital intensity of liner trade is in the same league as the steel business, or the chemical industry. This has been a very remarkable transformation of a very labour intensive business to a very capital intensive business. As a result, there's been a remarkable improvement in productivity. One can argue about the numbers, and there's no magic estimate, but the estimates of the gains in productivity resulting from containerization which I have seen are most impressive. They imply that somewhere between one-quarter and one-half the amount of shipping is needed to do a given transportation task today than was the case pre-1970. There aren't many industries that have undergone such a basic change in capital intensity and in productivity.

Because of both these factors, there has been one further change. The basic unit of capacity, the ship, has been becoming steadily larger and larger. Pre-containerization, liner trade was moved in very small vessels, by today's standards. With the first wave of containerization in the late 1960's the first generation vessels were five hundred, perhaps one thousand TEU's per vessel. The second generation ships, in service now, have a capacity of two thousand or three thousand TEU's per vessel. As some of you may have seen, Malcolm MacLean of US Lines has just ordered fourteen vessels in Korea, with capacity alleged to be forty-two hundred TEU's per vessel. Those are very large ships indeed, with huge capacities, and represent a very basic change in the industry.

Because of containerization, the whole nature of liner investment has changed. No longer do shipping companies just invest in ships. They're now forced to invest in containers, in shoreside facilities, and in a very extensive inland organization, in that they're now selling a door to door service, as opposed to a port to port service. So, what was once a fairly simple business, has now become a very, very, complicated business.

The third point to make as regards the external environment deals with the geo-political environment, and again there have been major changes. There has been a very basic and steady shift of maritime power away from the traditional maritime nations clustered around the North Atlantic. This has affected both the bulk trades and the liner trades. The shift has been, in the first instance, to the Far East, reflecting a basic change in the world's economic structure; more recently it has been towards the less developed countries, really reflecting less a shift in economic power as perhaps a shift in political power. There's also been a very steady shift towards the Comecon Maritime powers, whose goals are certainly as much political as economic. So the political environment has been changing.

To summarize the external factors, we are looking at an industry that is characterized by slow growth, by tremendous gains in productivity, by dramatic increase in the basic size of production unit, at an industry that's been shifting it's geographic location, and has been becoming increasingly politicized.

Let's turn from the external environment to the organization of the industry. Once again, there have been very dramatic changes in the past ten to fifteen years. I don't think many people really appreciate the changes that have taken place, and the reasons for it.

Perhaps the simplest way to dramatize what the issues are is to use a very simple example. The largest single liner trade link involving Canada is between Eastern Canada and Western Europe. One can do a very simple computation and show that a weekly containership sailing with capacity slightly less than three thousand TEU's could totally satisfy trade between Eastern Canada and Western Europe. That says a fleet of four such vessels, run by one organization, could fully meet market needs of Canada's major trade link. Such vessels exist and are being used around the world. You may say, "Well okay, but at the same time we're also moving American cargo through Canada." True. If you add in the American cargo, four ships such as are being built by Malcolm MacLean in Korea could fully meet market needs between Eastern Canada and Western Europe.

That's quite a mouthful. In the 1950's there were ten or fifteen liner companies serving that trade route. Today, there are seven. In the 1990's, one could do the job. Now, I don't think one should presume or conclude from this calculation that events will unfold in such a manner, but I think one should understand that there are very real technical and economic pressures, resulting from containerization, which have dramatically changed the entire structure of the industry and will continue to do so.

Therefore, it shouldn't surprise anybody that over the past fifteen years, there has been indeed a very dramatic change in the structure of the industry. Firms that were well-known have disappeared, gone. Many other well-known firms have merged, formed joint ventures, or joined consortia. The biggest liner shipping firm in the West is now Sealand, a firm that didn't even exist in 1965. New firms have been born, have become very large and died, like Seatrain. I would judge that of all the world's major industries none have seen the inflow and outflow of new firms to the same extent as marine liner transportation. It's been a very, very volatile industry, and the pressures for change really haven't disappeared. I certainly wouldn't predict that the next ten years will be much less exciting than the past ten years.

The other organizational aspect of the industry I would like to mention is the Conference system, which has been with the liner trade for many years. The description you heard from a previous speaker dealt with - well, I couldn't use his words - but I paraphase it as a group of very evil, corpulent, cigar-smoking men, locked up in a bank vault in Zurich, spending their time either counting money or making 'phone calls around the world to increase rates and squeeze out competitors'. I agree that this is one perspective. If I could tell a brief story, it reminds me of the two laboratory mice in a small cage in a lab. One mouse says to the other, "You

know it's a strange thing. That man in the white coat, whenever we ring this bell he feels compelled to give us something to eat." The moral of the story is that, depending upon which side of the fence you're on, things can look very different.

I would simply suggest that the proof of the pudding is in the eating. If Conferences behave, at least in Canada, (which is what we're talking about) the way it's been implied they behave, the pattern of freight rates increases and the present level of rates would be very different from what they are. Those of us in this room who are engaged in the industry day by day, on the shipping line side or on the shipper's side, know the competitive pressures within which the industry operates, and that the level of freight rates does not reflect a Conference monopoly on trade in and out of this country. If liner shipping is indeed a tight monopolistic cartel, it is a remarkably inefficient one if one measures success by profits.

But the Conference debate is not my topic. The CTC, I understand, is just about to begin its own debate on that subject with its mobile seminar on Canadian policy towards Conferences. But I would like to make the point, with regard to Conferences, and I don't think I can be contradicted, that over the years their ability to control, to dominate, has not gotten any stronger. It has gotten weaker, if anything. I think one can attest that by freight rate levels, by the ease with which new people have entered liner shipping, be they from the classic maritime countries, from the Comecon countries, or from the LDC's. There has been a tremendous flow of people in and out of the industry, and it certainly is not one that is dominated by an evil cartel or any cartel.

Let me say a few words, because time is moving quickly, about competition, which is in the title of my talk. Here, I do claim a bit of expertise, because I have had some very intense and concentrated personal experience, and do have some scars to show for it. Competition, is alive and very well. At best it's fierce, at worst it's vicious, and it takes many forms. It takes the form of competition between the Conference and outsiders, and there are lots of outsiders. It's a longstanding struggle, with no apparent victors. Competition takes the form of the liner trades versus neo-bulk traders (I mentioned that term before), constantly eroding away liner traffic. Competition takes the form of air cargo, perhaps still very tiny, but taking the cream, and it is the cream which would make the liner business much more profitable if it was left there. Competition takes the form of the traditional liner operators versus the con-bulk operators, who combine bulk cargo and containers, a very potent combination in certain trades. Competition takes the form of competition with the Comecon countries, who sometimes do very strange things if your sole standard is economics. Competition takes the form of landbridges, which utilise the inter-modality of the container to break down any tendency towards limited geographic monopoly around ports. So I would say that the people who use liner services are in the very nice position of having a rather large menu to choose from. They fully exercise their option of choice, as they should, and life for the operator is certainly not a bed of roses.

I am pushing too close to lunch hour, and even closer to cocktail hour, and both those things are bad. Let me do a bit of skipping, and just say where my own thoughts on the Liner Code take me. I would say firstly the

Code represents an attempt by the non-maritime nations of the world to fully politicize the liner trades. The background of the Code, in what has been described by a previous speaker as the LDC part of the United Nations, attests to this. The Code may have all the trappings of a multi-lateral understanding, something, by the way, the airlines could never do and haven't even tried since 1950. But I think basically the Code is really a very clever mechanism for forcing a large number of bilateral agreements into the format of a very loose, ambiguous, multi-lateral document. It's a complicated document. It's an ambiguous document, and only because of its complexity and ambiguity could it be passed and ratified.

You can look at the Code from many points of view. The classical economist would say whatever restricts trade and limits competition is bad. The "modern" economist would say that we have to redistribute the world's basic resources and give more to the developing world. The diplomat would say that we have to draft a treaty that reflects the changing balance of power, that reflects equity, and if you don't like 40/40/20, how about 35/35/30, but let's try and find some way to accommodate the various needs.

Well, to look at the Code from the viewpoint of Canada, we must remember that nearly all of our trade will remain outside the orbit of the Code. Canada is still groping towards a maritime policy: what to do about a national flag; what to do about Conferences; what to do about state-owned fleets. I would suggest that it would be silly in this context to make the leap of ratifying the Code, and taking a major position on one aspect of maritime policy without having the basic framework of an overall maritime policy within which to operate. I do think this country is still very far from having such a framework of maritime policy. I am really saying that to let the tail of the Code wag the dog of maritime policy would not be a very sensible policy for this country.

But what is I think clear beyond doubt is that the liner industry has gone through very basic technical, market and political changes. It has changed dramatically. It will change again in ways we can perhaps guess at, or speculate, but which we really can't forecast. I must say that I have very limited faith in the ability of international treaties, negotiated as such treaties have to be negotiated, to make any sense out of and respond to the complexities, the changes, and the developments in international shipping.

Put another way, if a liner Code had been adopted in the mid-1960's, based upon the world of the 1950's, one wonders how the Code would have dealt with what in fact happened in the 1970's. Are we any smarter then ten years later? One gets terribly nervous about the answer. Liner shipping is one of the world's most volatile, changing and dynamic industries. It has gone through and is going through a revolution in technology. It serves the interests of its users in this country very well. I have the greatest of difficulty in seeing why, as Canadians, we should be looking to the Liner Code to help us very much.

Session II: ECONOMIC AND COMMERCIAL ASPECTS

(The Costs and Benefits for Canadians)

Some Economic Implications of the Code

Mr. R. Daigle
CTC Research

Good afternoon Mr. Chairman, ladies and gentlemen.

I would like to thank you for tearing yourselves away from the distractions of "Le Caf'Conc" to come and listen to a humble economist of the federal bureaucracy attempt to ply his trade. It is not clear to me who has the less envious task: me in trying to keep you interested in the Code of Conduct after that delicious lunch or Harvey Romoff in trying to keep you concentrating on the Code after you were addressed by the charming Mrs. Zahradnitzky.

In any case, we see here at this seminar the application of one of the oldest principles in economics, that known as the division of labor. The Code of Conduct for Liner Conferences has implications in so many different areas that it would be impossible for one person to cover them all, not to say unwise to try to do so. For this reason, the organizers of this seminar have invited a significant number of speakers in an attempt to cover as broad a perspective as possible. The commercial, financial, legal, regulatory, operational and diplomatic aspects are being addressed, with speakers coming from the shipowners, from liner conferences, from the universities, from shippers, from labor and from government. It is within this context of covering a wide variety of aspects that I am going to address you on some of the economic implications of the Code of Conduct.

The economic point of view, of course, is not something that exists in isolation from all other points of view, and in some areas it overlaps the commercial, the financial, and the accountants' ways of looking at things. What economics has to offer that is unique is a great sensitivity to trade-offs, to the fact that every benefit to one group of society is a cost to another one or more of society's groups. If the expression "there is no such thing as a free lunch" was not coined by an economist, it should have been. Of course, we economists have our dignity, and rather than talk about the absence of free lunches we use expressions such as opportunity costs, or loss of welfare, but it really comes to the same thing. Now, being possessed of this particular point of view has certain implications, not the least of which is a rather bad reputation among those who like firm, strong, unequivocal answers. Being aware of costs as well as of benefits, knowing that there are trade-offs involved in any decision, allows us to take what we call a more balanced view of reality and what critics call

vacillation. Nevertheless we forge on, with both hands held firmly in public view.

Another distinguishing feature of economists is our predilection for using large quantities of numbers. I will not try to defend the use of numbers by economists but, instead, wish to reassure you that I do not intend to overwhelm you with numbers today. This is partly out of respect for the occasion, but primarily because our knowledge of what is really happening in Canadian international shipping is extremely deficient. Good reliable data on maritime matters of concern to Canada are just not available in most cases.

We have heard today of the imminent coming into effect of the Code of Conduct for Liner Conferences and have had the essential features of the Code explained to us. It is not my task this afternoon to describe the economic impact of all the changes in Canada's liner shipping environment, nor is it my duty to redefine for you the economic arguments for and against the existence of liner conferences. Rather, I shall discuss the more important provisions of the Code and speculate, from an economist's point of view, on some of their possible ramifications.

In my last sentence I used the expression "provisions of the Code" as though these were clear and unambiguous. This, as you know, is far from being the case. The Code is so full of escape clauses that it could probably be adopted without reservation by all countries of the world and still have only a minimal impact on liner shipping. However, since it is more interesting to talk about tigers than about pussycats, I will assume that none of the Code's escape clauses do, in fact, exist and that the strong forms of the provisions are the only ones that will apply. This, incidentally, appears to be the position of most of those who have gone on record in opposition to the Code.

When the vote on the adoption of the Convention on a Code of Conduct for Liner Conferences was taken in April of 1974, 72 countries voted in favour, seven voted against, and five countries (including Canada) abstained. The seven countries who voted against the Convention are all members of the OECD and several of them possess major liner shipping fleets. Two of these countries, namely the United Kingdom and Norway, have suffered drastic reductions in their liner fleet size since the early 1970's while another, the United States, has had a major increase. These countries, especially the first two, play a major world role as cross-traders and evidently see this role threatened by the Code. The limiting of third-country shipping lines to no more than 20 percent of the trade between any two countries is certain to have an effect on the economic operation of shipping between these countries. Third-country shipping lines will have no incentive to try to compete for a larger share of the market when the market is limited to 20 percent of the trade. They will have little incentive to develop coastal feeder services or inland distribution channels in the absence of a chance to develop this market share to satisfactory levels. A number of things may happen. The third-country shipping lines may leave only old inefficient tonnage to service their 20 percent, they may withdraw from the conference and operate as independent liners, or they may withdraw from the trade altogether and concentrate their efforts on trades where the Code is not being applied.

A large majority of countries, accounting for some 56 percent of world liner tonnage in 1973, voted in favour of the Code. These included the communist countries of Europe, who accounted for 12 percent of this tonnage, eight members of the OECD, who accounted for 21 percent of the tonnage, three flag of convenience countries, who accounted for 11 percent, and 54 of the world's less developed countries (known as LDCs) who made up the remaining 12 percent. It was mainly at the instigation of these developing countries that the Code was elaborated and adopted for approval. The statement of objectives and principles to be found in the preamble to the Code makes clear that the Code's provisions were agreed to "taking into account the special needs and problems of the developing countries with respect to the activities of liner conferences serving their foreign trade". From the provisions of the Code of Conduct one can infer that these problems fell into two major areas: rate negotiations and conference membership. The first of these problems is certainly not unique to the developing countries, and one can sympathize with the desire to have an influence on the level of rates to be charged the nation's exports and imports by such measures as strengthening shipper-conference consultations and having national lines become members of conferences. From the point of view of the developing countries, however, a stronger reason for wanting to join liner conferences is to assist the development of the national fleet. It is for this reason that they want reserved to their fleet 40 percent of their trade. In many instances, however, the developing countries do not have fleets of sufficient size to carry 40 percent immediately, and they will have to go on a program of fleet expansion in order to carry their allotted share. They can expand their fleets by buying or chartering surplus tonnage from the cross-traders who have been barred from their trades, or they can embark on ambitious and expensive shipbuilding programs. The latter alternative is obviously less desirable from a global perspective in that it adds tonnage to an already oversupplied market. It may, however, be more attractive to the LDCs if they cannot obtain ships of satisfactory quality from the cross-traders and if they have domestic shipyards they want to encourage. This may well turn out to be the case, since cross-traders will have an incentive to keep their best ships for trades where the Code does not apply. We may thus see a deterioration, at first, in the quality of shipping in the trades with the developing countries.

Up to this point I have been discussing the impact of the Code on the fleets of the cross-trading nations and of the developing countries, primarily with respect to the cargo sharing provisions of the Code. I now wish to move on to a discussion of the possible impacts on some of the parties directly involved in international liner shipping. First to be mentioned are, naturally enough, the liner conferences themselves. The Code is designed to regulate their conduct in a manner that has not been attempted before on a global scale although, of course, they have been subject to some strictly national attempts at regulation, especially by our friends south of the border. The proposed regulations would restrict the amount of discretion the conferences can exercise on rate matters, cargo allocation among member lines, and the nature of pooling agreements. At present, conference decisions are reached according to their own internal procedures, with veto power essentially lying in the hands of the strongest, most established liner firms. They make their decisions about such matters as rate levels, service levels, cross-subsidization, port allocation, cost

absorption, shipper consultation, cooperation with government, competition with outsiders, etc. according to commercial criteria and managerial style. Under the Code, however, national lines are to have a veto based solely on their nationality. These lines will in many cases be relative new-comers to the trade, unknown to the established lines, and thus, perhaps, even slightly menacing. Their managerial styles may well be different and their interpretation of what constitutes commercial criteria may rest on very unusual assumptions. Many of the existing national lines from the LDCs are owned wholly or partially by the state, which has a tendency to view them as instruments of national development rather than as profit-making ventures. With veto power being held by lines under pressure from national government shareholders, for example, to assist the export of manufactured goods rather than intermediate products, we can expect some rather acrimonious debates within conferences. This leads us to another significant change to which conferences will have to become adjusted under the Code. Article 23 of the Code provides that any party to a dispute, either one within the conference or between the conference and shippers, can request that the dispute be referred to international mandatory conciliation. Many observers of the scene have passed the comment that the proposed machinery for conciliation appears to be very cumbersome and time-consuming when compared to present methods of conflict resolution employed by conferences. To the extent that the Code's conciliation procedures involve the conferences in expensive litigation and delay the implementation of important decisions, there will be an increase in costs. Article 11 of the Code is bound to make some conferences unhappy, for this article makes consultation with shippers obligatory if the shippers request it. Not only must consultations be held before final decisions are taken on the issues under contention, not only must conferences provide information that is relevant to the dispute, but the conferences must also tolerate the full participation of government authorities in the consultations should the latter so request. This is a big change from current practice and sure to make many conferences uncomfortable. How this discomfort will manifest itself as far as freight rates are concerned is impossible to say, but one can anticipate a high degree of caution and reserve in pricing policies and an absence of rate innovation.

Another group of the participants in international liner trades to be affected by the Code of Conduct are the shippers themselves. Shippers want good reliable service at low rates. I mentioned earlier that the cargo allocation provisions of the Code may lead to a deterioration in the quality of vessel employed in trade routes subject to the Code. Older, more costly, less reliable ships could be concentrated in these trades, bringing a higher risk of loss and damage, delayed sailing dates, and unpredictable arrival dates. Furthermore, there is some suggestion that the enforcement of cargo allocation and pooling and the squeezing out of cross-traders will lead to a greater degree of service rationalization, which often means that fewer ports are served. While shippers may benefit overall, the losing shippers in the losing ports will have little to rejoice about. The level of freight rates is another big concern of shippers. I have already discussed, with relation to conferences, a number of elements which could increase their costs, which, given the alleged low rate of return in liner shipping, are sure to be passed on to shippers. Furthermore, to the extent that institutionalized pooling arrangements and national cargo reservation practices increase the cartelistic character of the conferences, there will

be a reduction in the competitive urge which leads management to reduce costs to the benefit of shippers. Another element which may cause high rates are the provisions which limit general rate increases to one every 15 months. In order to protect themselves from all the volatility in their input prices that can occur over such a period of time the conferences will face a great temptation to play it safe by asking for much higher increases than can be justified on past costs alone. Do the shippers want to trade off low rates in exchange for rate stability? I have no answer, but expect that in many market situations low current rates are better than high rates known 15 months in advance. Now I do not want to give the impression that all is dark as far as the level of freight rates is concerned. The Code contains some elements which tend to mitigate against high rate increases. The rationalization of services mentioned earlier should lead to lower operating costs for the conferences and, under Article 19 of the Code, the conferences are expected to reflect this in the level of freight rates. Furthermore, the knowledge that they must meet with shippers, that they must provide relevant information, that they may have to deal with government authorities may well act as a restraint on any conference desire to increase rates too rapidly.

I have described for you in the past few minutes some of the economic impacts of the Code on liner conferences and on shippers. These two groups, of course, are the most directly affected but there are a number of other areas of impact that I would like to touch on lightly. One of them concerns the possibility that the pooling arrangements and service rationalization promoted by the Code could result in a reduced number of ports being served. This is obviously of concern to port authorities with millions of dollars invested in cargo handling facilities. Another possibility is that strict application of national cargo reservation could lead to a substantial haulage of empty containers between end-points of a trade. Not only would this be wasteful but it could necessitate the construction of many more containers to serve world liner trade. I come now to an issue that cannot be avoided in discussing the economic impact of the Code. This concerns the attempts, both legal and illegal, of shippers and/or carriers to adopt practices which nullify the effects of the Code. The Code at present applies only to liner conferences. There is, thus, an incentive for some liner firms to resign from the conferences and operate as independents. If the Code is then interpreted to apply to all liner traffic, there will be an incentive for some firms to operate as tramps, or as specialized, neo-bulk type carriers. We may see the larger shippers and shipper associations buying or chartering vessels which are then placed in assigned service. If government reaction to these measures is to apply the Code's provisions to all shipping then, to a certain degree, shippers will use substitutes for ocean transport. In some cases it can mean ship by air, in others it can mean the use of long-haul land transport. A more drastic form of substitution would be for buyers to switch to products which are not involved in international shipping at all, such as tippling North American wines rather than the European varieties. These possible reactions on the part of shippers and carriers are all perfectly legal but we must not forget that in some cases the parties involved will be able to collude to ship goods outside the cargo sharing agreements, using some of the techniques traditionally known as malpractices.

I am approaching the end of the time allotted to me today and have not yet dealt with the subject of the Code's direct economic implications for Canada. The reason for this is very simply that the Code, under present conditions, will have little direct impact on Canada. We are not a major ship-owning nation with a large investment in a national liner fleet serving Canada's trade with the world. Furthermore, unlike some of the countries which voted against the Code, we do not have a major role as cross-traders earning valuable foreign exchange. In the absence of impacts on our ships there is the possibility of impacts on our trades. To make this discussion at all relevant I must abandon the stance of strict adherence to the Code's provisions and recognize that the European Economic Community has decided to ratify the Code with the reservation that the major provisions of the Code, including cargo allocation, will not apply to liner trade within the EEC and to liner trade between the EEC and contracting parties of the OECD. In 1975, the latest year for which I have data, Canada's trade with the OECD accounted for some 86% of our liner conference traffic. What this means is that for the large majority of Canada's liner conference traffic the status quo will probably prevail as far as the Code's major provisions are concerned. This trading pattern, incidentally, is also true of Canada's non-conference liner traffic, where 70% was with the OECD in 1975. This leaves us to be concerned with the 14% of our conference traffic which was with countries outside the OECD, almost all of it with developing countries. In this case, the LDCs as a group, and excluding the flag of convenience countries, already carried well over 40 percent of our trade with them in their national flag vessels in 1975. In fact, with some of our bigger trading partners in the developing world, such as Brazil, India and Argentina, their own flag share exceeded 70%. In short, as far as their trade with Canada is concerned, the developing countries have already attained many of the objectives for which the Code of Conduct was designed, and Canada has little to fear from its implementation. This is not to say, however, that in some very specific trades with the LDCs there could not be major effects, with some Canadian shippers facing great difficulty in negotiating satisfactory freight rate and service levels. In addition, almost half of Canada's total liner trade with the developing world is carried by non-conference liners. This trade is concentrated with the smaller LDCs and it is not beyond the bounds of reason to consider that these countries may attempt to apply the Code's provisions to this traffic too. In this case, there would be a shift away from the OECD flags and flags of convenience and our port authorities would have to get used to seeing ships flying the flags of the lesser known developing countries. This squeezing out of the non-conference cross-traders, and cross-traders in general, from their traditional trading areas could result in increased competition in the intra-OECD trades as displaced vessels look for employment in trades where the Code does not apply. Until a new equilibrium is established this could result in somewhat lower rates for Canadian shippers.

As my time for speaking, and your courtesy in listening, are virtually exhausted, I will quickly recapitulate and leave you with a parting thought. The Code of Conduct for liner conferences will have little direct economic impact on Canada. This is because our trading partners in the developing world already have what they want from us, because our major trading partners in the developed world have decided not to implement the Code's provisions, because we do not have a merchant marine to protect, and,

finally, because the Code is so full of qualifying clauses as to weaken it considerably. Having said this I now wish to mention that economic theories of international trade accept that certain countries are more efficient at producing certain things than others and that the commodities involved in international trade will be those commodities for which the countries involved have a comparative production advantage. What is true for the production of commodities is also true for the production of liner shipping services. International economic data for the past 20 years show that the leading sectors of the economically advanced countries are specializing in the information industry rather than in basic manufacturing, with production of the latter being increasingly located in the developing countries. It is not unreasonable to expect the shipping services for the carriage of manufactured goods to gradually migrate to the developing countries also, and this, in fact, is what we have been seeing in the past 10 years, Code or no Code. History may well look back on this Code of Conduct not as an instrument for the promotion of the developing country fleets but, instead, as an instrument for the protection of the developed country fleets.

It was a pleasure talking to you.

A Shipping Conference Viewpoint

Mr. D.D. Day, Jr.
Chairman
Pacific Westbound Conference

Good afternoon, ladies and gentlemen.

I would start my presentation by thanking those responsible for the organization of this seminar for inviting me to participate and expressing the hope that what will follow will provide grist for the mental milling of those here.

When I was first contacted about participating, I was approached on the basis that what was desired was someone who could speak as a conference voice. From my past experience, as a conference chairman, I can say that, except for rare circumstances, it would be virtually impossible for anyone to speak with a "conference voice", for nowadays almost everything discussed is controversial to some extent and subject to great debate. As a result, the comments I make here to-day are my own observations and do not necessarily reflect the thoughts, ideas, or positions of the members of my conference.

Background

Ratification of the Code, as we have heard earlier, has been an on-going process now since 1974, and only recently (when it now appears that the requisite ratifications are imminent) are many of those who will be affected taking notice.

Why have so many adopted, for so long, this attitude of apathy? Has it been that many felt that there was little likelihood of its ratification, or - perhaps a feeling that with so many of the ratifications being conditional that the ultimate effect would not seriously change our business? The fact that this seminar, and many others like it, are taking place is witness to the confusion that exists. The Code has been examined by all variety of experts and has been described variously as

> "A complex instrument"
> "An ambiguous policy document"
> "Subject to numerous interpretations"

and further -

> "It is difficult if not impossible to capture and distill the essential meaning and significance of the Code."

Some who speak in favour of the Code claim that it is the only means by which the future of conferences and their benefits can be assured.

This attitude is skeptical - that without the Code, the trend will be toward independent activity and chaotic trading circumstances. Without doubt, there will be continued disagreement over the implications of the Code for some time to come and perhaps the Code's real implications will only come after a period of artful experimentation or like breaking in a new pair of shoes where we must suffer a few blisters before they become comfortable. The trial and error system, while not the most scientific manner of discovery, may well be the only method of finding our way through these uncharted waters.

I do not see my job to-day as commenting on the advisability of adopting the Code in full or in modified form - or for that matter, totally rejecting it. My task is to comment on the potential impact that the Code will have on conferences. In covering this area please forgive me if I raise more questions that I answer, but that appears to be the nature of the beast at this time.

Four basic areas need to be covered -

1. The conference structure
2. Rate stability and levels
3. Service levels, and
4. Shipper/conference relations

Article 2 of the Code, dealing with participation in trade, contains within it perhaps the prime area of interest - the so-called 40/40/20 cargo allocation between national and non-national lines. It has stirred considerable interest and controversy and is, by now, generally accepted as a guide. As we review the areas suggested above, the implications of this cargo allocation will be a common thread appearing in the fabric of all of them.

Conference Structure

First of all, it is obvious that the future existence of the conference system is assured. The early negotiations may have created doubt about the future of conferences but the drafters of the Code in its final form, left no question but that the conference system is a key to rational, productive, ocean-borne commerce between nations. The Code, first of all, seems to declare itself (and indeed has been promoted by pro-codists) as a guideline as opposed to rigid requirement of enforceable international law leaving much to negotiation and tailoring to individual trades as may be practical.

Article 1 - membership - specifically provides the right of conference membership to national shipping lines but does not require national lines to be members. Non-national flag carriers may be selectively admitted to membership depending on a number of criteria enumerated in article 1. Is it not possible that a country with more than one national line could have carriers both in and out of a conference with those in carrying their national share of the conference carryings and those outside carrying an added share of the total trade? This, it seems to me, points up the limited area (i.e., conference activity only) of application relating to membership and participation in the trade.

The general effect of article 1 is to provide for closed conferences and pooling, which is an acceptable concept in most world trades, but not acceptable legally in others.

Over the past few years, there has been a tendency toward more and more independent activity by carriers who feel that they can exist quite adequately living under the conference umbrella, and these are not inconsequential carriers in many cases. In many trades the problem has not been how to keep them out of the conference but rather to encourage their participation as a conference member.

While the Code suggests and encourages closed conferences and pooling, it does nothing to prohibit open conferences. The extent to which the open conference idea would be viable is dependent on agreement on national shares and what cargo is left over for non-national lines in the trade.

Decision-making procedures under the Code (article 3) are general and would, for the most part, leave most conferences with little or no change. However, there is one hitch. Article 3 provides that "A decision cannot be taken in respect of matters defined in a conference agreement relating to the trade between those two countries without the consent of the national shipping lines of those two countries". This infers unanimous agreement among the national lines of two countries to accomplish matters involving those countries under the conference. This would be most difficult if not impossible to accomplish in many trades. It is hard enough to get a simple or two-thirds majority, let alone unanimity. This requirement will have to be tempered for each trade.

Sanctions under the Code provide no particular surprises nor major difficulties for conferences to live with.

Self-policing is provided for in the Code and is set forth there in terms similar to some extent to the requirements in U.S. trades to-day. Most major conferences' agreements presently have some provisions for self-policing. The extent and type of policing does vary from trade to trade along with the enthusiasm for its accomplishment.

If we accept that article 2 (participation in trade) with agreement in a trade of, say, equal 40% shares for national lines of each country and 20% allocated to non-national carriers and an effective pool within the conference, the question of the need for heavy policing arises, for why, if one is guaranteed a proper portion of the trade, should there be a need to take "extraordinary" measures to over-carry.

With due regard to some of my earlier comments regarding possible independent national lines, the probable effect of closed conferences and pooling under article 2 would be the virtual assurance of membership of national carriers whose revenues would likely be reasonably guaranteed and hopefully adequate to permit them to meet their obligations to the trade. As for non-national lines, they could seek to survive as outsiders since they would not be restricted to any given share of the trade as an

independent. Intervention of either country's government to take legal action restricting cargoes carried by non-nationals could, of course, close that door.

Summarizing on conference structure, it would not appear that many trades would be heavily affected with, perhaps, the exception of the U.S. where closed conferences are not permitted presently and pooling, while not prohibited, is not looked on favorably.

Rate stability and levels

This is, without a doubt, one of the most sensitive, argumentative, frustrating, and contentious aspects of liner operations. The conference system has existed for over 100 years for the purpose of providing a reasonably stable and predictable rate structure which would take the gamble out of the freighting end of foreign trade and allow a seller to concentrate on the other sales advantages such as quality, service, price, availability and others. In spite of changes that have taken place to shake us from that goal, it is still our prime target and an area of major consideration in the Code. Chapter IV: freight rates begins at article 12 dealing with criteria for freight rate determination. Article 12 reads as follows:

Criteria for freight-rate determination

> In arriving at a decision on questions of tariff policy in all cases mentioned in this Code, the following points shall, unless otherwise provided, be taken into account:
>
> a) Freight rates shall be fixed at as low a level as is feasible from the commercial point of view and shall permit a reasonable profit for shipowners;
>
> b) The cost of operations of conferences shall, as a rule, be evaluated for the round voyage of ships, with the outward and inward directions considered as a single whole. Where applicable, the outward and inward voyage should be considered separately. The freight rates should take into account, among other factors, the nature of cargoes, the interrelation between weight and cargo measurements, as well as the value of cargoes;
>
> c) In fixing promotional freight rates and/or special freight rates for specific goods, the conditions of trade for these goods of the countries served by the conference, particularly of developing and land-locked countries, shall be taken into account.

So long as sub-paragraph (b) does not require carriers to make inbound and outbound rates on an interrelated basis, there should be no problem. If that paragraph requires a two-way coordinated rate structure, we are in deep confusion and trouble. Normally, the in- and out-bound pattern of trade and products shipped is so diverse as to require a totally separate consideration - except that there must be adequate revenues for the round voyage to insure a reasonably profitable business for the carrier.

As for conference tariffs and classification of tariff rates, I think all of us in this business are for simple, decipherable tariffs. Like motherhood and apple pie, we would all appreciate straight forward descriptions and no qualifying notes or exceptions. Regrettably, in our zeal to be "responsive" to the shipping public we are often guilty of establishing slight,very slight, distinguishing exceptions which we hope will allow us to retain revenue on currently moving commodities and yet encourage and nurture a new movement on a very similar description. I'm not sure there is a way to overcome this foible of human nature.

General freight rate increases (GRI)

Article 14 suggests a 150 day notice period prior to the effectiveness of a GRI is altogether too long for purposes of either shipper or carrier. The projection of operating expense and other costs for a period 5 to 17 months in advance would require a crystal ball far in advance of the models currently available, and the end result could well be declaration of increases higher than needed if shorter notice were utilized. Consultations are called for in the case of a GRI, including submission of data by the carriers, to justify the announced increase. Failing agreement, the matter is referred to conciliators for recommendation. (I think upon retirement I shall seek a position as a conciliator as it would appear to be a promising enterprise).

Today's GRI procedures are not too much different with the exception of North American trade where (with a dual rate contract) we announce an increase 90 days in advance (unilaterally) based on carrier needs. During the ensuing period of 3 to 4 months, the conference then reviews the numerous requests of shippers for exceptions to the increase. It is not unlikely that the conference may be able to secure a 2% to 2 1/2% increase in revenue out of an announced 10% increase. Perhaps there is merit for the carrier in a negotiated increase without commodity exceptions.

Promotional freight rates have long been a recognized need in our business and the provisions of article 15 provide no insurmountable obstacles to conferences.

The need for various surcharges and currency adjustment factors are recognized but with the regrettable bureaucratic procedures (except for notice) that are applicable to GRI's. Overall rate stability should be changed very little from what we are accustomed to to-day. If the conferences' structures tend toward the closed basis, it is most likely that rates will probably be higher than they might otherwise be. Shippers must recognize, however, that we have undergone a period of general depression of rates with accompanying carrier failures and difficulties and that in order to continue service levels the carriers must have improved rate levels over the long term. There is no free lunch .

As pointed out, service levels need revenue to be maintained over the long term. That can be accomplished, to some extent, also by rationalization leading to more efficient use of capital equipment and energy. To the extent that conferences are permitted to rationalize and take advantage of the opportunity, service and rates can be harmonized to both carrier and shipper benefit. On the other hand, there are those who

maintain that competitive circumstances provide the most effective means of achieving the best mix of service and rates. Perhaps they are correct. Perhaps we must now consider trial and error or the new pair of shoes and blisters for the ultimate answer.

Last but not least is a favorite subject of mine, conference/shipper relations. For too many years now shipping conferences and shippers have taken antagonistic positions vis-a-vis one another. They have lived (or more appropriately "existed") in a hostile atmosphere, where neither trusted the other. Yet each one, without the other must forego all or a large portion of his business. They are interdependent, for without cargo generated by buyer and seller, the carrier has no business, and without the carrier to provide place utility for the cargo, the buyer and seller are out of business. Every so often conferences are called upon by shippers to provide closely held confidential business information to justify a particular rate or charge and the conference, for good reason declines, in effect saying "trust me". On the other hand, the carriers are many times asked for downward adjustments in rates or charges backed in glowing terms and predictions of the fantastic expansion in tonnage that will swell carriers' revenues and in effect saying "trust me". Unfortunately, too often that trust is not there.

The provisions for consultation, annual reports, availability of tariffs are all items which could be acceptable to those conferences who do not have this as policy now. By this I do not mean that conferences should be required to bare their souls with every act they do or contemplate.

Last among the shipper/conference relations is loyalty arrangements. Any conference is only as strong as the tying device securing shipper cargo. If shippers desire a stable, predictable rate structure, they must also be willing to live with a strong, enforceable loyalty arrangement. If there are any loop-holes or leaks, rest assured that the arrangement will ultimately die and that stability will disappear.

My thanks to you for your patience and attention, and the opportunity to participate. I would hope that what has been said has been stimulating enough to evoke some questions.

Thank you.

A Shipper Viewpoint

Mr. J. Turpin
Vice-President & General Mgr.
Canadian Transport Company Ltd.

A. Canadian Shippers Objectives

The Canadian exporter is wondering what the effect of the UNCTAD Liner Code is going to be. How is the Code likely to influence export business when it is implemented?

I am concerned about these effects - some of them look favourable - but many of them are not. And so this talk reviews the subject in the following manner.

1) What are the Canadian exporters objectives?
2) Does the Code meet these objectives?
3) If the Code does not meet the objectives what should Canada do?

Let us start talking about objectives of the shipper. An exporter needs the lowest possible freight rate, and an adequate level of service frequency. The quality of cargo handling is also very important, but this mix of freight rate and service is not the only criteria. Most shippers are knowledgeable enough to realize that freight rates can be too low if they put an efficient shipowner out of business because of lack of revenue.

It is too simplistic to say that the shipper "gets what is paid for". International competition results in many wide price fluctuations - including freight rate fluctuations. But the shipper does realize that what is paid must in the long term cover the costs of freight including a return on the liner operator's investment.

The next objective of the shipper is to be assured that the conference cartel is not using its power to extract an abnormally high profit or unreasonably insulate its members from the risks and fluctuations of world trade. It is this objective which leads the shipper to think that the conference should provide some proof - some justification - that its freight rates or surcharges do not exceed costs by any excessive margin.

The final objective of the Canadian shipper is freedom of choice. The shipper wants to choose the carrier without interference. The shipper wants to make a commercial choice without Government or conference restrictions.

In summary the shippers objectives are:

a) Satisfactory freight cost, service frequency and cargo handling;
b) Conference accountability for its freight rates and surcharges;
c) Freedom to choose carrier.

B. Do we need controls over conferences?

Before I start commenting on how the code meets these objectives, may I digress and give you some opinions based on experience as a shipper, a Shippers' Council supporter, and more recently, a ship operator.

The people who drafted the Code had an extraordinarily difficult job. There is a huge gap between the opinions of shippers and conferences and between developed and less developed countries. Shippers suspect that some conferences are using their power to extract higher revenues than needed.

They are not satisfied by the assurances of conference members that they are not making abnormal profits, and are in many cases losing money in the poor shipping market of the last few years. They are also worried that if more conferences became successful cartels, then more of them would be charging excessive freight rates. Those shippers who have been included in Canadian Shippers' Council committees, have found conferences extremely reluctant to provide any factual data to support their claims for the necessity of charging bunker fuel surcharges.

On the other hand, conference members are strongly aware of great competition for any high value business. They encounter tough competition from non-conference carriers and also from within the conference. I can tell you from recent experience that a conference can be a viscious place to do business - there is not much feeling of a comfortable cartel. And so, many people who represent their companies at a conference are wondering what the fuss is about. ...business is tough ...they are struggling to cover costs ...so why won't the world let them get on with their business in peace? These are often fine people - they don't see themselves as needing controls over their activity, and they strive hard to avoid them.

I think the reason why there must be some control over the actions of conferences is quite simple. The object of a shipping cartel is to try and provide some insulation for its members from the effects of competition - to try and provide more secure profits. That sort of activity is usually allowed only when it is in the public interest. In Canada it is normally against the law. The fact that many conferences do not succeed in their objective is hardly a justification for an absence of controls over the conferences.

The choice we have to make in Canada is how to arrange this control or counter-balance. Should it be Government (the CTC?), or should it be a private sector shippers group, and should it include the UNCTAD Code?

C. The UNCTAD Liner Code

Now let us look at the UNCTAD Code as it would affect Canadian shippers if implemented by Canada, and as it would be interpreted by conferences who believe sincerely that they do not owe accountability to anybody other than the shipowner.

1. Chapter 1 - Definitions

There is no definition of the word "consultation". When used later in the Code to describe discussions and negotiations between shippers and conferences, the word consultation is used.

In most shippers' experience, conferences will interpret that word in the way it is used in the health field. You go to a doctor for a consultation ...you tell him your problem ...the doctor tells you what to do about it. That is hardly a negotiation!

In the past few years there have been numerous occasions when conferences have told Canadian Shippers' groups that they will not negotiate.

2. Article 2 - Participation in Trade

Paragraph (4) establishes the 40/40/20 cargo shares. Paragraph (6) and (7) divide up the share if a National Line does not participate in the trade. John MacAngus tells us that the Code does not specify 40/40/20, but that is what is in the mind of many countries.

Quite clearly, this article is likely to infringe on the Canadian objective of freedom of choice.

The carving up of trade between National Lines is not likely to improve efficiency of the conference, and is risking increased freight costs. Mr. Daigle has just given us a vivid illustration of these risks.

3. Article 7 - Relations with Shippers

Paragraph (1) gives conferences the right to establish loyalty agreements. There is provision for consultation with shippers about the loyalty agreement, but Canadian shippers (as I have already stated) have reason to be sceptical about these consultations. Canadians want some freedom of choice, and the loyalty agreement limits this.

4. Article 11 - Consultation Machinery

Paragraph (1) says that consultation between shippers and a conference SHALL take place. But later in the article there are 12 matters which MAY be the subject of consultation. These are the key items of importance to shippers (freight rates, surcharges, etc.). In my experience a conference which is told that it MAY have to do something which it doesn't want to do - doesn't do it. For effective negotiations to take place the word MAY should be replaced by MUST or SHALL.

5. Article 12 - Freight Rates

Paragraph (6) says that the cost of operations shall be evaluated on the round voyage with outward and inward voyages considered as a whole. The clause then goes on to say that where applicable the inward and outward voyage should be considered separately.

This paragraph does not seem to be able to make up its mind. It is certainly not in the interests of Canada's low value commodity shippers if conference costs are evaluated on the round voyage.

6. Article 14 - Freight Rate Increases

Paragraph (1) provides for a notice period of 150 days or according to regional practice. In this case the Code is suggesting an unfairly lengthy period of notice. This is not a reasonable period from the conference point of view, and invites the introduction of temporary surcharges to make up for delays in obtaining increased freight levels.

This article also sets out the timing of conciliation procedures which are dealt with in detail later in the Code. But it is article 14, paragraph (5) which says "The Recommendation of the conciliators, if accepted by the parties concerned, shall be binding upon them and shall be implemented."

By the words "if accepted", the conciliation procedures have been neutered, and rendered ineffective if a conference desires them to be ineffective.

This neutering is repeated in article 37, paragraph (1).

7. Article 17 - Currency Changes

Paragraph (1) establishes a system by which changes in currency values can be reflected in a currency adjustment factor or a change in freight rates.

If a conference chooses the latter, then a currency surcharge is effectively buried into the freight rate. Conferences have a tendency to add surcharges while applicable costs are rising, and then rolling them into the freight rate when that cost may decrease. That is precisely what numerous conferences have been doing during the fall in bunker prices in recent months.

8. Article 43 - Conciliation Costs

Paragraph (1) (a) says that costs of conciliation shall be borne equally by the participants. This would be a difficult burden for a low budget shippers group.

These are the major implications of the Code from a shipper's viewpoint. I cannot see that they will help Canadian exporters unless there is a great change in the willingness of conferences to accept the spirit of the Code. Certainly, the letter of the Code provides enough channels through which a conference can sail its ships unhindered by any effective counterbalances.

The main parts of the Code which are clear and inequivocal are the cargo sharing provisions of article 2.

Thus if you accept the objectives for Canadian shippers that were mentioned earlier, then one has to conclude that the Code does not adequately meet those objectives.

D. What should Canada do?

I don't want to finish this talk without some positive suggestions. Canada does have to do something, because the introduction of the Code is occurring in other countries, and some changes in trade methods will occur.

Thus, Canada needs a method of appointing a National Shipping Line. In the event that no Canadian company is serving that trade, Canada may well encourage a foreign company to locate in Canada and establish its head office management in this country. If we follow the ideas of the Code in this matter, such a National Shipping Line may use chartered vessels of any flag. Canada needs the ability to deal with cargo preference laws of other countries and the ability to appoint a number of National Lines will become necessary.

With respect to the relationship between conferences and shippers, Canada has to make a decision. Do we stay with the current Shipping Conferences Exemption Act or do we strengthen the control of conferences by some body such as the Canadian Shippers' Council, or even introduce control by the Canadian Transport Commission? This decision depends on the nature of the problem, and that is what the CTC public hearings will learn this summer.

I believe that the decision will hinge on the needs of the small shipper - not the large shippers who can usually look after themselves.

Who in this room is representing a company with sales less than $20 million/year? There is nobody -- just nobody. And that is the experience that we had in the Canadian Shippers Council.

In Canada, in 1979 there were over 10 thousand manufacturers with sales less than $20 million. They had total sales of $33 billion, and exported 11.2% - or $3.8 billion.

These are the Canadian exporters who need the support of an effective counterbalance to conferences. These are usually the companies who do not have much bargaining power on their own, but need our support because they are a vital part of the economy.

Since we find that the UNCTAD Liner Code does not provide adequate support to these shippers, it is a challenge to Government and its agencies to find a method which will.

Joining the search must be shippers and carriers - yes, carriers because if we do not join the search for sensible and effective support for our customers, we conference members will not gain their trust and backing for our conference system.

A Shipowner Viewpoint

Dr. Pierre Camu
President
March Shipping Ltd.

In presenting the shipowner viewpoint, it is essential to say that I am not a shipowner, but a shipping agent. As such I represent a foreign shipowner in Canada and try the best I can to protect and defend his interests and locate cargo to fill his vessels. We represent the various types of foreign shipowners that are most interested by this discussion, namely a) the shipowner member of liner conferences, b) the independent shipowner that, by definition, is not a member of liner conferences but offers a regular service between Canadian and other ports of the world and c) the shipowner of specialized vessels carrying bulk commodities, liquids, heavy-lifts or specialized cargoes; this last group, the largest, would include the owners of tramps and tankers and is the least interested by the topic under discussion. The Code would affect directly the first two groups of shipowners, those that are members of an existing conference and the independents, in different ways.

It is my intention to comment on two articles, namely articles one and two dealing with membership and participation in trade, and one of the definitions of the existing Code and to introduce in my conclusion some remarks of general interest to participants of this seminar. The first article deals with membership of Conference.

Should the membership be open or restricted? To such a question, both the conference liner operator and the independent shipowner, competing with one another on the same route, cannot remain indifferent. My problem about the economic and commercial aspects of the Code, however, is to relate them to the shipowner and ask the question differently. The appropriate question would be: as a shipowner what are my chances to make money, to become a member of such and such a conference or is it preferable for me to stay out and remain an independent operator, free of all these new regulations to which my competitors would be subjected. Such a discussion on the first article of the Code of Conduct could be developed further, but since there are virtually no Canadian deep-sea shipowners, it is almost a futile discussion. Even if there were Canadian deep-sea shipowners operating either Canadian flag or foreign-flag vessels, they would have to ask the question for themselves. I suspect that their preference would be to stay out of conferences and specialize in the bulk trades unless bilateral trade agreements are signed between our country and many other countries of the world, reserving Canada a very good share of cargo tonnages to be carried at reasonable rates operating under foreign-flags or Canadian-flag vessels. In this latter case, the present policies about a deep-sea fleet would have to be modified considerably. Since there is no likelihood that this will occur, the advantages or disadvantages of being a member of a Conference remains hypothetical.

Another point to be made is to recognize the existence, side by side of services offered by independent shipowners in competition with services offered by conference liners. With such a system, it is not necessary for a shipowner to become a member of a specific conference if he can provide another choice to the shipper, usually at lower rates. That choice is already offered to shippers on many routes.

Perhaps the most discussed article of the Code is article 2 dealing with participation in trade. Some speakers have already identified what kind of trade we are talking about. It is still important to repeat and determine in terms of percentages the amounts of cargo tonnages carried by Conference liner services.

How much of the foreign trade of Canada is carried by vessels operated within the conference system? Not very much. It represents "only about 10% of the tonnage of total overseas waterborne cargo shipments in Canada's foreign trade" in 1975 [1]. In another study of the CTC, one says that it is only 8% [2]. And within that 10%, conference vessels carried 69% and non-conference vessels some 31%. That is the right perspective. The trade with the United States is excluded. One would be tempted at this point to conclude that since the foreign trade of this country carried by conference liners is so small, why all this fuss, why such a seminar? It affects few shipowners, but those who are affected wonder if the Code of Conduct is necessary at all. The shipping regulations of Canada are already so numerous and cumbersome, that a foreign shipowner is better to use modern vessels, well-equipped and staffed with very alert personnel when entering our waters. If his vessel is a conference ship then he will be governed by the existing Shipping Conferences Exemption Act of 1979 which will cease to be in force on March 31, 1984. The mechanisms are there, perhaps they could be improved to provide further safeguards to the shipper.

In North America, there have been controls for many years and decades and within the concept of free trade in its wider sense, the least regulations, the better. One agrees that a minimum of control is needed and as long as independent shipowners can operate along the same routes, the forces of competition will protect the shipper in providing choices and frequency of services and rates, and that is what it is all about. If a shipowner is willing in that context to take a chance and be able to survive and live, then he should be encouraged by the public and the legislator as well.

We have witnessed the growth of the Code as a protective measure for countries having no fleet and depending almost totally on conference liner vessels for their imports and exports. It was not and it is still not the case in our country. The foreign shipowner, member of a conference or not, is seen as an operator exploiting a new country by taking advantage of its lack of choices in using water transportation. So an UNCTAD code of conduct for liner conferences was seen as a good instrument to curb "ocean liner companies which engage in price-fixing and other commercial practices designed to restrict competition" [3]. It may or at least it should provide the necessary controls these countries have been looking for.

The shipping world is changing rapidly, especially in the traditional conference liner services which have been organized to carry

general cargo (the most profitable type of cargo) by vessel between the ports of the world. The container vessel has changed many concepts, the new combinations of ro-ro and container vessels, or bulk and container, or multi-purpose vessels of various types, shapes, speed and equipment have introduced new elements which almost makes the Code of Conduct outdated. One wonders with the new global approach of certain shipowners offering new vessels that are so sophisticated that even the concept of conferences may be outmoded and replaced by other types of commercial agreements, including multiple co-op agreements between two or more shipowners (it takes a minimum of two shipowners to form a conference) offering better rates to a shipper. Let me mention a new trend that may affect the shipping world like the container revolution did in the mid-sixties. We may see the emergence of world conference liner services circling the globe and operated by a few very large shipowners in association with multiple smaller feeder services owned and operated by scores of shipowners of various countries. This concept would leave room for both, the giants operating global systems and the small ones feeding the vessels of the giants. Let us call this first point, the technological and conceptual change.

If the shipping scene is changing, the shipowner is also aware that his vessel is becoming a link within a transportation system, whereby the customer is offered one comprehensive rate, door-to-door, no matter if its ton of cargo moves by truck-rail-vessel-rail-truck to destination and is transferred four times between three modes of transportation. We are moving away from the "port to port" concept to the "door-to-door" one with one single bill of lading.

The Canadian Pacific example or model of a global system comes to mind as well as the Cast system with its fleet of trucks at either end, in Montreal and Antwerp and the combination of bulk and containers within the same vessel. Commercial practices are thus introduced to simplify trade exchanges for the benefit of the shipper. The point we wish to make is to outline the new commercial procedures and practices as the second element in the changing scene of international shipping.

The third element is political, one refers to the emergence of new fleets associated with the creation of new states. The individual shipowner is replaced by an anonymous state-owned fleet, considered as an instrument of power, prestige and of trade control. Once this is done, it is natural for that state to assist its new fleet by reserving part or all of its foreign trade shipped by water for its own vessels. For instance, all imports are carried by national flag vessels. Without elaborating and citing numerous examples, we reach what is emerging as the 40-40-20 formula or even the 50/50 formula where the total tonnage between the two countries is divided equally between the two state-owned companies. If one of the countries does not have a state-owned carrier, it may designate one of its private carrier-shipowners. One can imagine the problems of a shipowner not recognized as the official carrier or one of the carriers of its own country. How about the shipowner representing the third flag carrier who will now be limited to a share of the 20 per cent of that trade and compete with many others for that piece of pie. Obviously, it is going to be difficult for the individual shipowner to survive in such a partitioned world.

Many writers recognized that a country has a prior claim to transport its own trade instead of being subjected to a few conferences and be forced to use them. This right could have been answered by giving to the national carrier the mission or duty to open lines that are not served by conferences already and create new maritime links with new partners. The obvious argument against such a plan is that the most profitable lines are those served by the conferences and the new lines are the least profitable. They are also the lines that will require the greatest capital expenditures to develop and will keep the fleet on a subsidy basis for decades if not forever. The other argument is, of course, the one related to the right of controlling its foreign trade by being directly involved in it and using its own vessels.

What is confusing to the general public and even specialists in shipping is to determine first if the concept of allocating the 40-40-20 per cent of the trade is applied to the total trade between the two countries or not. It is confusing because there are two levels of discussions and agreements, the first one consists in bilateral agreements between countries, the second one in agreements between liner services or shipowners. If these two types of agreements would always be separated, it would immediately be more clear. But sometimes, there is a mix of both types of agreements. It may happen, for instance, that one of the countries is a state operating its own fleet through a state-owned company and reserving to that fleet the first 40 per cent. We could assume that all types of cargoes are included here, bulk as well as general cargo. The other interpretation would be that the 40-40-20 applies only to that portion of the trade to be carried by members of the conference. That is the correct interpretation I understand. Bilateral trade agreements between two countries are one thing, conference liner services is another. To put a clause in a bilateral trade agreement between two countries that would outline specifically that the trade is going to move on a 40-40-20 split among shipowners is a third point. Could we then assume that with the multiplicity of bilateral trade agreements, there will be more and more restrictions to the free-flow of exports and imports as far as shipping is concerned, and less and less opportunities for "cross-traders" to survive and offer to shippers of two trading countries another choice to carry their cargoes at another rate? Diminishing choices lead to cartels and monopolies, in such a context, conference liner services are replaced by trade agreements where shipping rates and conditions are also predetermined. It is assumed that the implementation of the code would be on a conference basis instead of a country to country basis.

What then would be the effect in the case of Canada, when liner vessels carry only 10 per cent of its total overseas tonnage? What kind of an impact would it have in general and on the shipowner in particular? This digression on the political aspect related to the emergence of new national fleets and the reservation of a good share of the cargo tonnage to such a carrier as well as the two previous points are all related to article 2 of the Code "Participation in trade". The answers to these questions appeared partially in a study of the CTC based on statistical data for the year 1975 [4]. Many trade movements and percentages are the same, despite recent changes, it is of interest to note some of the conclusions reached by the authors then.

1) More than 86 per cent of all the Canadian conference traffic was carried to and from OECD countries [5].

2) The impact of strict application of art. 2 (40-40-20) assuming that Canada has designated a national line, the Canadian carriers would carry 40 per cent, the national carrier of the other country, 40 per cent, leaving 20 per cent to third country shipping lines. The results from a shipowner's point of view are an increase in the share of tonnage carried by lines of the trading partner and a decrease in the share of tonnage carried by cross-trading third flag lines. However, the study has pointed out that in the case of seven individual countries (U.K., Japan, Yugoslavia, the U.S.S.R., India, Brazil, Argentina) the national carriers of these countries would lose a fair share of their tonnage, but the share of third flag shipowners would increase in the trade with Yugoslavia, U.S.S.R., India and Argentina. The authors point out that if other countries form a coalition (like the EEC proposal) then there would be several adjustments.In terms of tonnages, it would mean that of 5.8 million tons of cargo moving through conference liner services, 2.3 million tons would be reserved to Canada's national carrier(s), 2.3 million tons to trading partners lines and less than 1.2 million tons to third flag carriers. These shipowners would be the real losers and, of course, the new Canadian shipowners would automatically gain.

3) Point 2 above is hypothetical because Canada has no deep-sea fleet and cannot designate a national carrier(s). So, without a national line, the effects would result in two-thirds being carried by national lines of our trading partners and one third by third flag lines. This represents an increase of the cargo tonnages carried by national lines of the trading partner and a decrease of the traffic carried by third flag lines. There would be some exceptions where the traffic of the national carriers would decrease to the advantage of third flag lines because they carry already more than 2/3, these countries would be Japan, Yugoslavia, the U.S.S.R., India, Brazil, Argentina. In limiting choices, there would be less individual shipowners involved and also less choices to the shipper. If this is so, why vote for a Code that limits rather than increases the choices offered to the shipper?

4) The other modifications to the strict application of the 40-40-20 formula are the coalition of Canada with EEC countries, or a coalition with OECD countries.* In the first instance, it would imply a net increase in the volume of traffic carried by the lines of participating countries, at the expense of non-EEC trading partners' national lines and especially third flag cross-trading lines. In the second instance, (coalition with

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* The proposal is to form a collective cargo share redistribution.

OECD countries), it would imply a net decrease in the volume of traffic carried by the lines of participating countries and an increase of traffic carried by third flag lines.

The individual shipowner should be worried about all these changes that would affect regular liners all over the world. It goes against the free trade environment in which he has worked for as long as he remembers. The Code of Conduct will perturb the shipping world to the benefit of whom? Is it needed when other changes enumerated earlier are already taking place? It seems that the status quo has some merit.

An updated analysis of the statistical data based on 1980 for instance would have been useful at this point to confirm the above results, readings and assumptions or to deny some affirmations. A quick analysis, superficially done, reveals that non-conference or independent carriers are carrying more than before, decreasing the importance of conference liner services further in the total Canadian cargo tonnage movements. There are other forms of competition that have contributed to the erosion of cargo tonnages carried by Conference liner vessels, some have been mentioned in the speech given by Mr. H.M. Romoff earlier. In a recent brief of the Shipping Federation of Canada, one cites six forms of competition to conference lines operating in Canada, four of these involve shipowners:

a) tramp vessels,
b) non-conference liner services operating from Canada,
c) air freight,
d) non-conference liner services operating from USA ports,
e) conference liner services operating from USA ports,
f) non-conference operating common carriers [6].

I agree that the tonnage of Canadian cargoes moving through U.S. ports may affect the results of 1975 and those of 1980, but there is a similar effect on American cargo tonnage moving through Canadian ports (cereals, coal and containers being three examples). I also agree that a careful reading of relationships between flags and ownership is necessary. How about the "flag of convenience"; could a Canadian shipowner, using a flag of convenience for its fleet, be designated as a national line carrier? If the answer is yes, then several such shipowners could be designated tomorrow and the strict application of the Code by Canada, as discussed in point 2 above, could take place. The foreign shipowners (no matter which flag they use) would see their shares decrease, of course, and the Canadian shipper will start wondering if the rates will increase. The definition of a national shipping line as mentioned at the beginning of my contribution, does not prevent a Canadian shipowner to be designated, even if all its vessels are registered in other countries. This is my reading of the definition of National Shipping Line in the section of the Code dealing with definitions. To have or not to have a deep-sea fleet would then be less important in the debate. But would Canada be prepared to sign bilateral agreements and then, once it has reserved 40 per cent of its trade, to designate carriers that have their "head office of management and its effective control in that country and is recognized as such by an appropriate authority of that country or under the law of that country"? If so, then it goes against what I said a moment ago that Canada could not abide to the strict application of the Code. It could, but is it necessary?

Many people attending this seminar have come here, almost resigned to the inevitable consequences of the Code being ratified soon. Hence they are trying to find compromises or even outright approval.

Let me ask this question, is the Code necessary to Canada? The answer is no for the nine reasons given below:

1) It affects less than 8 per cent of our total waterborne ocean cargo tonnage, noting, however, that in value it may be much more.

2) More than 86 per cent of the total conference traffic is with OECD member countries. It is concentrated in one part of the world. What may be needed is a regional solution, not a global one through the Code of Conduct. If the trade with EEC countries would be exempted from the Code as well as those covered by bilateral shipping agreements, then there is absolutely no need for the Code in this country.

3) Canada has already the necessary mechanism to control shipping conferences. These mechanisms such as the Canadian Transport Commission could be given new powers to control more adequately. "The Shipping Conferences Exemption Act is reasonably tailored to the public interest because it is pragmatic and flexible". [7]

4) Many technological and commercial changes are taking place in the shipping world today that are rendering the application of the Code almost obsolete.

5) Individual shipowners are naturally opposed to more regulations and to any initiative that would curtail the free trade aspects of their operations. It would precipitate major transfers of gross registered tonnages from one flag to another to the detriment very probably of the individual shipowner.

6) Alternatives to the Code are numerous. For instance: commodity-specific or closed-end bilateral or multilateral agreements, pooling agreements, multilateral or bilateral fleet pooling consortia or similar arrangements. All of them would affect the individual shipowner, let us hope however, that he could be offered the opportunity to bid on and win a piece of the tonnage.

7) Conditions that have made it viable for world shipowners to serve Canada well, should not be altered to the detriment of the shipper without knowing what the consequences will be. After all, one of the objectives of the Code is to give preference to national flag carriers to the detriment of third flag shipowners who provide additional choices and competition that in turn keep rates low.

8) There are other independent liner services that are offering an alternative to shippers. (If this would have been the case in

connection with developing countries, there would have been no need for a Code). These services are the alternatives so well known in this country. It is a Canadian solution exported to the rest of the world to have side by side a state-owned company competing with a private sector entrepreneur or company. It is true in air and rail, in broadcasting and more recently in the energy field. Shipowners other than Conference liner operators usually offer this alternative at lower rates.

9) What would happen next, if this Code is approved? It will "whet the appetite of the legislators" and the next step might very well be a Code dealing with bulk commodities, another one with liquids, and so forth. If there is ever a move to control the shipments of bulk products, then Canada would be in serious difficulties.

My comments on the shipowner viewpoint were confined to the first two articles of the Code. Having examined the other articles in greater detail, today, I would have become an ardent opponent. I do not hesitate at this point to recommend to our government not to abstain as they did the last time, but to vote against the application of the Code.

REFERENCES

[1] CTC - International Liner Shipping and Canadian Trade, Ottawa, 1979, XI, 134 pp. (reference on page 19)

[2] CTC - Cargo Reservation and Liner Conference Shipping serving Canada, Ottawa, 1979, XI, 137 pp. (reference on page 21)

[3] CTC - International Liner Shipping and Canadian Trade, p. 1

[4] CTC - Cargo Reservation and Liner Conference Shipping serving Canada, Ottawa, 1979.

[5] The following discussion is based on pp. 26-47 of the study Cargo Reservation and Liner Conference Shipping serving Canada.

[6] Brief to the Water Transport Committee of the CTC by the Shipping Federation of Canada with respect to the shipping conference inquiry. Montreal, 1982; p. 5

[7] Ibid.; p. 5.

Practical Experience under Cargo Sharing/Reservation Conditions

Mr. A. Nightingale
President
Saguenay Shipping Ltd.

Ladies and Gentlemen,

It is my view that, within this decade, world trade will become entirely regulated, at least on major general cargo routes and possibly on dry and liquid bulk routes, by bilateral trading agreements of one form or another. The fact that the Government of Canada fails to recognize this inevitability is of no consequence.

The Canadian Government, under pressure from the manufacturing and exporting groups of this country, is dedicated to the principles of free trade. A very noble concept in theory but one which is completely out of keeping with today's protective attitudes that nationalism generates, especially in the developing countries. It is all very well when sitting at a table of ten, to preach free trade, provided that a reasonable number of the group are like-minded. It is a complete waste of time when the other nine are dedicated to protectionism.

Our partners in South America recognized the inevitable, and I believe also recognized the justice in trade sharing, and in order to give some measure of protection to their own interests, whilst at the same time recognizing the rights of others, entered into the joint service agreements which Saguenay Shipping Limited presently enjoys with CAVN and Grancolombiana. Other countries in South America, such as Brazil, do not acknowledge the rights of others to share in the import trade to their country, unless, of course, the exporting country has taken a firm stand on this issue, which Canada has not.

It is interesting to note the difference in attitude in this respect which prevails in various countries even though they may be in the same overall geographic area such as Latin America.

In the case of Venezuela and Colombia, it was apparent that there was a need seen by the governments of those countries for some sort of bilateral trading arrangement to be established and this need was transmitted to the national lines which consequently had the full support of their governments. Saguenay Shipping Limited, on the other hand, although receiving a considerable amount of moral and informal support from various departments of the Federal Government in Ottawa, did not have the benefit of a formal position being stated by Canada.

In the case of Brazil, it is apparent that neither the government of that country nor the commercial interests involved see any reason for trade sharing, enjoying as they do a complete monopoly in the trade from

Canada to Brazil and, although a joint statement of Canadian and Brazilian ministers has been made to the effect that both ministers would like to see the trade established, they leave it entirely to the commercial interests involved to reach some form of an understanding. You will appreciate that it is practically impossible for commercial interests in both countries to reach any sort of an agreement whilst the commercial interests at one end of the trade have the benefit of the protectionist attitude of their Government whilst those of us at the other end have the free trading position of the Canadian Government to contend with.

Recent efforts have been made by Saguenay Shipping Limited to enter into an arrangement similar to the Venezuelan and Colombian one in Mexico where the Mexican government, although having very firm cargo reservation legislation on their books, does not choose to enforce such legislation but rather believes that any sort of joint service arrangement between commercial interests is acceptable, provided, of course, that it is equitable and in the interests of both nations. The difficulty, of course, in establishing a joint ocean liner service between Mexico and Canada is that any ocean carrier must compete with the existing railroad arrangements through the United States which makes the competitive ocean rates completely unattractive. It should be borne in mind though that should such a joint service be established, then it would be purely Canadian and Mexican in content rather than third party controlled as it is now by the participation of the United States railroads who cover the major part of the movement.

The manufacturers and exporters to whom I previously referred would, of course, see no reason why the movement should be purely Canadian/Mexican and they have the misguided impression that the entry of a Canadian national carrier into any trade must inevitably cause an increase in ocean transportation costs. This impression arises from the assumption that Canadian operating costs are much higher than other first class national carriers. This is not so.

The increases in Canadian operating costs which have occurred over the past few years may appear exorbitant when considered from a domestic point of view but when compared to increases in cost on the international market, they have been reasonable. Increasing standards of living in developing countries and the thrust of the International Transport Workers Federation to equalize seamen's wages around the world, have caused rapid increases elsewhere and have resulted in a catch-up process. Greece, for instance, has I believe been subjected to 40% increases in each of the contracts which they have negotiated with the Seamen's Union over the last few years. Canada has fortunately not been subjected to these pressures due to the high standard of living which we presently enjoy and the relatively high wage levels which prevail and for once on the Canadian scene, the question of subsidy need not arise provided shippers will pay realistic but competitive rates based on actual operating and capital costs of the sophisticated vessels on regular service which they demand.

Entry of Canadian carriers into any trade will not result in exorbitant increases in ocean transportation costs but will rather mean that Canadians - manufacturers, exporters, carriers alike, and, in fact, our Government - will have a voice in the various bodies which regulate the trades such as conferences, and will be able to protect our national

interests. This will become of increasing importance as conferences play an essential part in any cargo sharing agreements which are made. Although the Code does not specify that cargo will be shared by conference members only, this is, in fact, the position that a number of nations are taking. Brazil, for instance, makes it a prerequisite that all Brazilian carriers participate in conferences and that such conferences recognize the legislating authority of the Brazilian government. They concede, of course, that the conferences must be open to "other members".

It is interesting to note that, on the other hand, the United Kingdom is resolved to protect the position of outsiders and considering that this attitude is being taken by a nation which stands at the very foundation of the whole conference system, it is worthwhile noting.

Saguenay Shipping Limited in its U.K./Continent to Caribbean/Latin America service is a member of the Association of West India Trans-Atlantic Steam Ship Lines (WITASS), and has, therefore, not until the present time been concerned in that service with cargo sharing by joint service agreements such as Saguenay has in the Canadian service. However, in the future, how cargo sharing will be enforced in a conference which includes not only members from the United Kingdom but also from Scandinavia and Europe, all trading to the same destinations in the Caribbean/Latin America, is a question which is going to be extremely difficult to resolve and, in my mind, one which will call for the rationalization of this conference, and, in fact, other conferences, to a greatly reduced number of eligible members.

Another question which arises is how a liner code of whatever nature, or conference rules related thereto, can be complied with by the increasing number of first class carriers, many of whom are national lines, engaged in, or endeavouring to establish, round the world services.

The eligibility of any carrier for participation in the national portion of a cargo sharing arrangement, whether it be 40% or 50%, must be resolved in favour of the national position of the carrier in its fullest sense, i.e. the nation where the carrier is registered as a corporation and where it pays its corporate taxes. To allocate a share of the trade on the basis of flag and port of registry of the vessel alone, or on the basis of where the beneficial ownership of the vessel or company may lie for convenient commercial purposes, would be a mistake. Once again the United Kingdom is taking the position that beneficial ownership should be recognized, but when one considers that about half of the world's fleet which wears the red ensign is owned outside of the United Kingdom, then one can understand the British position.

I have been asked to describe to you the experiences of my company under cargo sharing arrangements which we presently enjoy with our Venezuelan and Colombian partners, but I have chosen rather to try to describe to you the reasons why these arrangements were made in the first place and the considerable difficulties which we have experienced, during my tenure of office, in trying to repeat the exercise with other foreign trading partners of Canada.

The arrangements which we presently have, I can only say, have worked extremely well, not only for Saguenay Shipping Limited, but also for

our Venezuelan and Colombian partners, but this may be largely due to the fact that these agreements were entered into voluntarily rather than as a requirement of any code, and with good faith of all the principals involved. Such may not always be the case when enforcement occurs.

As in the case of any worthwhile partnership, problems have occurred. Our partners do have a conflict of interest between the operations which they both have to and from United States ports and the amount of Canadian cargo which crosses the U.S./Canadian border thereto, and our joint services from Canada. Saguenay, on the other hand, has purely Canadian interests, operating as we do only from Canadian ports. Joint service rates are, therefore, set by agreement between our partners and ourselves under the strong influence of U.S. rate structures and, in many cases, are well below realistic levels for a Canadian movement to South America, given the extra steaming distance involved from Canada.

An additional, although intangible, benefit of any joint service arrangement, given, of course, the conviction with which the participants enter into such an agreement, is the close relationship and understanding which can develop between two different national entities whose only common factor is the shipping business which they are together engaged in. This is good not only for the companies involved but for the countries which they represent.

It is also very important that any cargo sharing agreement in the future provides for completely free access to all ports at each end of the trade, should the need arise, and in our own particular case we experience difficulties with various areas in Venezuela and Colombia which, by agreement, we are excluded from.

In conclusion, apart from our own particular joint service, cargo sharing agreements which we operate under at this moment, I feel that a 50/50 arrangement between any two countries is more realistic than the 40/40/20 one proposed, or any modified version thereof. Why?

Importing and exporting countries have the right to control and participate in the trade to and from their respective countries, and the ocean transportation involved is an important component of that trade.

This is particularly true of aid or government controlled, or subsidized or promoted cargoes which in the case of CIDA and EDC financed cargoes in Canada, although supported by the Canadian taxpayer, are nevertheless free to move from Canada on free flag vessels. Surely the ocean freight component of the total cost to Canada is as much an eligible part of the Canadian content as is the Canadian labour and material used in the manufacturing process.

There is really no moral or political justification for the outsider who enters the trade without any real commitment to it other than the return which he expects on his investment. Furthermore, the outsider without a national affiliation to the trade in question, and the commitment and national responsibility which such an affiliation demands, will not, and in fact, cannot, protect the best national interests of his country in that trade, including the interests of manufacturers and exporters.

You will note that whilst I am calling for firm Canadian Government support to the Canadian shipping industry to counter the protectionist policies of foreign governments and thus ensure equal Canadian participation in trade, I am not calling up a requirement for designated carriers. The designated carrier concept is great - provided, of course, you are the designated carrier -but in all fairness Canadian Government support should be given to all members of the shipping industry, at least at the beginning when establishing a new trade. This will then introduce the competitive element between national carriers which manufacturers and exporters rightly demand, and the most efficient and competitive carrier will survive.

However, once the trade is established by such a carrier and the long and tedious groundwork has been done, often in a loss leader position, then there is absolutely no justification for new entries into the trade at a later date who would enjoy the benefits of all the groundwork done by others. In other words, one must from the beginning have earned the right to represent one's country in a trade and must continue to deserve that right.

Thank you.

PANEL DISCUSSION 1

Chairman

Professor G.K. Sletmo
Professeur Titulaire et Directeur
de l'enseignement du Marketing
École des Hautes études commerciales

THE CHAIRMAN: Thank you very much. We have had quite a day. Mr. MacAngus mentioned he had worked for ten years in the field, and was less certain of his opinions now than he was when he started. I have not worked that long in this field, but I must say that since this morning I also feel that perhaps I have more questions than answers. Monsieur Dubé made a very interesting comment at the very early part of the day when he mentioned why Canada had abstained when the Code was voted upon. The three reasons he gave were; number one, that shipper interests perhaps were not adequately represented; secondly, that the Code is ambiguous; and finally, the question over the cargo sharing might reduce competition in Canadian trades. I observe with some interest that, at this point, I think there is agreement only on one point, and that is the question of ambiguity. I think on the two other questions, whether shipper interest would be adequately protected or not under the Code, or whether cargo sharing would increase or decrease competition, we have heard different viewpoints.

The purpose then of this last hour is to try, and perhaps achieve, a somewhat greater precision on some questions that might come from the audience - expressions of opinion. Just a few rules of the game, given that we have one hour at our disposal, I would ask those who decide to intervene to try to the extent possible to phrase short questions as succinct as possible. I remind you that the session is being recorded, and simultaneously translated. For that purpose, what I would like you to do, those who wish to ask questions, go to the nearest microphone. When you are recognized, and I'm afraid I might have to do that by the number of the microphone, since there are many faces I would not be able to associate with a name, then please state your name as clearly as possible for the recording, and also, if you so wish, give your affiliation, or present responsibilities.

I have already received one question, I think we should proceed with the questions right away, that I received from Jack Bathurst.

I think the question has been partly answered by the two or three of the last speakers, but I think it is a question that's important to underline. The question refers to what happens to independents under the Code. How would the Code affect independent operations? What would happen if a conference member decided to leave a conference after the Code was adopted? I had occasion during the break to discuss this with my learned lawyer colleague, Professor Tetley, sitting in the back, and I just wanted to check. It's my understanding that indeed it's a Code of "conference conduct". It's not a liner conduct as such, in that the Code and any cargo sharing applies to the conference traffic only, which would mean that the independent would preserve whatever traffic he has, and it has been suggested to me that if indeed a conference member left the conference that, in theory, that company could take its share with it as it left. There are several people on the panel I think who addressed themselves to the same question. Would somebody on the panel care to comment on this? Mr. Day?

MR. DAY: I brought up the question, as I recall, of what if we had a situation where there was an independent line, and suppose that independent line were a national flag line, what do we do? I'm not sure that the Code is entirely clear on that and I think it is subject to a great many interpretations. Presumably, yes it is a Code of conduct for conferences. So when he leaves the conference he becomes an independent. If he is a non-national flag line, then presumably he is left to his own, and whatever he can get he gets. It's a very independent situation. But I think the one thing with something that is as ambiguous and as difficult to interpret as the Code, the one thing that we can be assured of is the constant employment of lawyers.

THE CHAIRMAN: Well, I was told by a shipper I knew some years back that his company would have been profitable if it were not for the legal fees he pays every year. That was somebody operating out of the American environment.

The floor is open for questions. Will you please go the nearest microphone? Identify yourself.

MR. HASSE: My name is Gerhard Hasse. I'm president of ACL, and since this morning, very gladly found out that I am a member of the rich and powerful, because we belong to a conference.

I have a question of Mr. Turpin, if I may?

I understand that in order to negotiate and in order to consult with each other the conference members, who are conference members, are supposed to supply relevant cost information, or, as its says, yes, I believe relevant

cost information. Mr. Turpin, as you know legal cartels also exist on the shippers' side. In other words, it is quite possible for a group of Canadian exporters to combine, form an export club, establish quotas, an export price, and export under those circumstances. Would you consider it reasonable that if relevant information were to be necessary for consultation, however defined, that the conference would have the right to ask from an export club equally relevant information about their costs, however you define it?

MR. TURPIN: The quick answer is no.

But, behind the question is, I think, a topic requiring a great deal more and better legal opinion on the subject of exporter cartels than I'm able to give. My limited knowledge tells me that there's a growing body of legislation throughout the world which prevents the formation of such cartels, that for example in the EEC that is no longer an option for Canadian exporters. There are extra-territorial effects of U.S. law. Somebody told me earlier on today, I think I've just mentioned 86 per cent of Canada's trade, or something, where such export cartels are not allowed. The argument that you have put forward has, frankly, often been put forward by a conference chairman when I was representing the Shippers' Council. The argument was, "You want to discuss our prices, you want us to justify our prices, well why don't you justify yours?". To which our response was, "We are acting legally under the laws of Canada. You are acting under an exemption from those laws, which requires that you provide some information - so please provide it."

MR. HASSE: I understand that export clubs also act, and can act, under an exemption from the Combines Act. Indeed, I formed one several years ago when I was in manufacturing, with total impunity.

THE CHAIRMAN: I see a hand at the end of the table. Is that Mr. MacAngus, who would like to add to this?

MR. MACANGUS: Thank you, Mr. Chairman. Yes indeed.

It seems to me that we might turn the question back to the questionner and ask him if he is prepared to grant a promotional freight rate to a manufacturer without examining that manufacturer's books. As I understand it, the conferences will not grant a promotional freight rate. I don't know if everybody knows what a promotional freight rate is. It is where you have a new product entering into a foreign market. Before it can become viable as a continuing flow of product you have to test the market. You would like to get your product into that

foreign market. You would like it carried at a promotional rate, a rate that will give you at least half a chance of breaking even, at the cost of penetrating a new market. I understand that the conferences will demand to see your books. They will demand that your books are open, when, and before, they fix that rate. I may well have understood wrongly, but this is what I've been told. On the other hand, when the conferences fix the general rates, I think this was what was in the questionner's mind, that they believe the question of cost should not enter into the fixing of the general rate. Therefore, there is a discrimination there, between the treatment by the conferences of the request for a promotional rate, and the way that they fix the general rate. Thank you, Sir.

THE CHAIRMAN: I see another hand here. Mr. Day would like to say something. Just before I give him the floor, before he once more suggests that the future's for lawyers, I would like to say a word on behalf of economists.

I think there is a problem when we try to exchange information between a shipping line and, say, a manufacturer, because a product line for a shipping line is totally different. It's a joint product used by many different users, and the cost information becomes very complex. So, I think there is, apart from the legal aspect, there is clearly also economic questions that have to be decided.

May I just give a word to Mr. Day? Do you have a comment on this?

MR. DAY: Yes, just a very quick one.

I've been with a conference, a group of conferences for eighteen years now, and I don't think we have ever asked to see anybody's books. We have enquired as to the value of the commodity, which is not unusual in any trade. We have asked for competitive freight rates from other points of origin, and that is about as far as we have ever gotten in anybody's books. I don't know, just off the top of my head, of any conferences who do this. Maybe they are located in Europe or somewhere.

THE CHAIRMAN: Thank you.

MR. MOORE: Jim Moore. I have a two-edged interest in the original question. I'm Secretary of The Canadian Shippers' Council. I'm wearing quite a separate hat of the Canadian Export Association.

As a practical matter, research and a recently published book by Professor Darwin of Montreal indicated that there

were very few operating export consortiums out of Canada, despite apparent freedom under the anti-combines legislation to do this. Of the less than 20 that have been formed, very few are still operative. Those who are operative and are significant are not shippers using liner services. By and large, they are involved in charter operations. I think the kinds of companies, I'm not revealing any secrets, are people in industries like potash, sulphur, certain parts of the forest products industry, John, not your own I don't believe, they are successful consortia, but of a scale where charter is very very significant.

I'd like to switch to my Canadian Export Association hat. The reason why export consortia have not been formed, and this is rather similar to the U.S. situation under the Webb-Pomerene Act is not because they're not permitted, but because of the great deal of concern there is among manufacturers and producers. But no matter what they may agree to legally, which relates to exports, there has to be, even though inadvertently, a reverse side to that coin. If you're talking about exporting with your competitors here in Canada, you're going to learn something about the domestic business. It's going to affect supply in the domestic market. Or at least, that is the concern among exporters thinking about export consortia, that is the concern that they have in the way in which it would be interpreted by the Consumer and Corporate Affairs anti-combines' people. But, as a practical matter, the export consortia in Canada are a very insignificant part of out total trade, and they're not, by and large, in the conference line of business.

THE CHAIRMAN: Thank you very much. Sue Hill?

MS. HILL: My name is Sue Hill. I'm an economic consultant. I should say that I am doing a study for the interdepartmental review committee of the Shipping Conferences Exemption Act on exactly this whole question of information requirements and provisions, and I'd be glad to have private conversations with anyone who has had experience, or has comments to make on this.

THE CHAIRMAN: That was Sue Hill. You will be able to find her in today and tomorrow if you have information that could usefully be included in a study.

MR. BENNETT: My name is Gerry Bennett. I'm with the Council of Forest Industries of British Columbia.

I, too, noted the reasons given by Monsieur Dubé on why Canada abstained from voting on the Code. He gave the three reasons, and I, like Mr. Camu, feel the three reasons for abstaining seem to me to be three good

reasons for voting against it. I'd like to ask someone, I don't know who I would direct the question to, maybe Mrs. Zahradnitzky, or Mr. MacAngus, what is the Canadian government posture on the Code now? Is it taking a passive view, impartial, is it in favour of the Code, or is it opposing it? If we are not opposing it for these reasons, why don't we oppose it?

THE CHAIRMAN: Mr. MacAngus?

MR. MACANGUS: Thank you very much, Mr. Chairman. Sir, as a public servant, I take my head in my hands once again, on saying why the government is doing, or not doing, or appearing or not to do whatever it is.

I think that the fact that you're all here is evidence that at least the two sponsoring bodies, the Ministry of Transport and the Canadian Transport Commission, insofar as they assist in the formulation of advice to the government, are concerned that perhaps not all of the voices and opinions on the Code of Conduct, as a viable thing in the Canadian context, have been heard. This is why a seminar - why the floor is open to questions. What is being done about it is a gathering of opinions here, and until those opinions are in, and I think in the context of a review of the legislation on the Shipping Conferences Exemption Act, which is coming up later on in the public hearings being organized by the Commission across the country, a recommendation will come out of that. What we've heard so far may or may not have justified a vote against the Code as much as an abstention. But I think perhaps we haven't heard all of the voices yet and, in the context of the Code itself, this was in 1974; in 1974 there were very few people here in Canada talking about the Code, outside of government circles. The question of whether or not to abstain, at the end of the day, the eleventh hour of the conference, if I can put it that way, because, in fact, it was 2:30 in the morning when the final vote was taken in Geneva, and there's always that last question, "Shall we vote against because we believe X, Y and Z, shall we submerge those and go with the majority?". And I have to confess to you that it was my hand that held up the card in the vote on the collective decision of the delegation. The collective decision was, if in this convention there is nothing of apparent positive harm to the Canadian interest, then, on the grounds of our foreign policy in general, we should not seek to thwart the developing countries coming to an agreement which they may put in position for themselves. We should not thwart them coming to that kind of agreement and, in that sense, an abstention is certainly not thwarting them. The way the vote went, what was it - 75 to zilch - it wouldn't have made any difference whether we had voted against, of

course. Now it's too late. It is too late to oppose the Code now. It is there. It is going to come into force. There is nothing you can do about it. But, in the sense of rolling back the hands of the clock, you can say, well what is open to us now is to decide whether we want to have a Canadian formal acceptance, and put it in practice here in Canada or not, and I think this is part of the process by which a collective view can come to light, in seminars of this kind. Thank you, sir.

THE CHAIRMAN: Thank you. I would just like to add a comment. First of all, it seems to me we have just learned a fourth reason why Canada abstained. The vote was at 2:30 in the morning, was that it? Now it's suggested that the clock has moved ahead. We have today been talking primarily about the economic aspects. As I see this, whether Canada goes for the Code or once more maintains a neutral position, is clearly very much a question of how industry feels, how the shipping community feels. So I think in this case, it's important that the various interest groups do speak up and, in this case, have the opportunity to contribute to policy making. Canada has had a fairly neutral position in shipping, and I think history has shown that it's been greatly to our benefit, if you compare with the situation south of the border. So one of the questions then is, is the situation now sufficiently changed, that we will be forced to take a stand, and I think tomorrow it is going to become even more complex when one begins to look at political, international ramifications.

MR. AKSIC: My name is Anton Aksic. I am Vice-President of Zim Lines in Canada. I am also, what could be called a cross-trader and, so far, I'm the only voice of a cross-trader. I am also a non-national carrier, to use Mr. Day's expression. I am also a national carrier for another country. However, speaking as a cross-trader, I was quite puzzled by Mr. Nightingale's statement, which sounded to me that a cross-trader takes less responsibility when carrying certain international trade than a national carrier would. In my long, long, experience, it is quite different. A cross-trader doesn't take national trade for granted which national trader does have a tendency to. As I say, I wear another hat, I am a national carrier in another trade. I do know that in that kind of trade you sometimes have an attitude to take it, or leave it. If you are a cross-trader, you have to bend to that trade, you have to please that trade.

Then, the second statement, that there's nothing to move you than simple earning, there's no other motivation for a cross-trader to come here than to earn the money, absolutely correct. There is just no other interest whatsoever. Now, I am challenging that; what is wrong

with that? That is perfectly our system under which we live, and we hope to live for always. It is the earnings indeed which bring us here as a cross-trader, and what we earn.

And last, the extolling the virtues of the mutual agreement with the certain countries, and either being a nominated or not nominated carrier. I could be certainly put here, obviously many people representing the cargo interest, and they have their experience, say, concretely, with such a situation, that let's say, two countries mentioned by Mr. Nightingale, what sort of rates exist from Canada to those two countries versus same Caribbean area, where the trade is open, where there are no cross-traders? My challenge is, under no condition where trade is restricted to one carrier or two carriers or a limited number of carriers, that this is beneficial for the rates. Now, that is my voice as a cross-trader.

THE CHAIRMAN: Thank you very much. Mr. Nightingale? Will you respond to that?

MR. NIGHTINGALE: Mr. Aksic, I am not saying for one moment that the cross-trader does not have any sense of responsibility. I am saying that he does not have as great a sense of responsibility as a national carrier does on a trade.

On the question of rates, the rates structure which we operate to Venezuela and Columbia, I have already said is in line with the competitive rates out of the United States. They are rates which are far below the level which would meet operating costs. They are still not low enough for a number of our shippers and Canadian manufacturers and exporters. I think there has to become a realization in the exporting community that if we are to provide the regular service, which they are calling for, that they must be prepared to meet costs, at least, let alone the profit element, the cost element. Thank you.

THE CHAIRMAN: Thank you very much.

MR. FFRENCH: My name is Rudy Ffrench, Acadia University, Professor of Economics. My question is directed to two gentlemen, Mr. Nightingale and Mr. Romoff.

There is a rather common thread that runs in the discussions and statements made by both individuals. This morning Mr. Romoff indicated that we could, in effect, have one shipping line, carrying 3,000 TEUs, once a week, which would, in normal economic terms, be a natural monopoly. This afternoon Mr. Nightingale suggested that there should be no government

interference, we should allow quite a bit of competition, and the survival of the fittest, which in many instances would be one firm, because he himself used the term that they would reach this position through loss leadership, which means simply, cutting prices and getting your competitors out. The question I would like to pose to both individuals is one which I imagine many shippers face. What will be the constraints on increases in the freight rates following the evolution with a structure which you have a monopoly in any of the two models that you suggest?

THE CHAIRMAN: Thank you. Mr. Romoff, would you respond please?

MR. ROMOFF: Sure. Thank you.

Well, I don't believe I said this morning the end results would be a natural monopoly. I think the point I was trying to make was that there were certainly strong economic pressures leading towards a smaller number of larger firms in the liner industry, and that is beyond question. It's happened over the years, and the pressures still exist. I think one should not make the jump from saying that if one firm operating 3,000 TEU ships weekly can physically do the job, that that need be the best organization for that trade. There are pressures for large firms. I doubt whether it will evolve to that extreme. Even having said that, I doubt whether there will, ... put it the other way; even having said that, there is no doubt in my mind that there will be room for major outsiders, as there always has been. There are major outsiders now operating in these trades. Indeed, certain outsiders are operating vessels larger than conference members. So again, that makes you wonder where the world is taking you.

THE CHAIRMAN: Thank you. Mr. Nightingale?

MR. NIGHTINGALE: I did call for Canadian government support, which is not the way you just stated it, for establishment of the trade. I said that in giving that support, the establishment of the trade should be open to all comers, all national comers.

On the loss leadership question, one large element of the loss leadership equation is the cost of establishing the service in the first place, setting up the whole network. That is the element which I feel should qualify the successful entry into the trade, to remain in that trade, as long as he deserves to stay in the trade, which is rate-oriented.

THE CHAIRMAN: Thank you very much.

Other questions from the floor? Mr. Bathurst?

MR. BATHURST: Sir, I want to ask the question of what is the impact likely to be on terms of trade, c.i.f., f.o.b. What does this leave the shipper as a choice? And secondly, following on Zim's question, the round-the-world trader, we've now got Malcolm MacLean coming in with these big container ships. They're on a round-the-world service and, I mean, a ship which goes at Marseille, for instance, to pick up cargo for Canada, for the States, or for Caribbean countries, how does this cargo sort of get allocated? Is this going to add to bureaucracy? Is it going to add to the cost of shipment? Where does the shipper stand? Thank you.

THE CHAIRMAN: Thank you, Mr. Bathurst.

Is there someone on the panel who would attack that question? Thank you, Mr. Camu.

MR. CAMU: I'll tackle the second part of your question. I think I mentioned the trend towards global services. The example given by Mr. Romoff, and the one you have quoted, is from MacLean, of course, the inventor of the container, so to speak, and now he is moving with these very, very, super large container vessels of 4,000 boxes and more, and he is thinking of a global service. Now, how many of these services will be in the next decade? It is hard to say, but I can see a consortium of Japanese moving before long on that. I can see another country, a line that we represent, that have indicated to us that they are moving to that. Will there be another group, under the banner, let's say, of European flag operators moving to it? Let's say you have four services circling the world within ten days, with these huge vessels. What you will have from these vessels will be feeder services. But, it doesn't matter how it is done, carried, and so forth. You have to go back to the other idea of the door-to-door business. If you are in the door-to-door business, and you have one bill for one ton being carried between one point and another, then you don't care how it is carried, who moves what part under what section of it, you will end up with consortia, very big ones, and what will happen, as long as you, the shipper, know that there is a computer following your container, or wherever it is in the world, it's within the organization of shipowners to be sure that this is transferred from one service to a feeder service, to another, to a trucker, to a rail, so it goes to destination. It's not impossible. It's done already in some parts of the world, and tomorrow it will come probably as a fact. It's quite possible. Of course there will be battles along the lines. You can see that, if it's going that way, where only the giants will survive. Now maybe I am a dreamer, but I'm trying to

read through the crystal ball to see what the evolution will be. A shipping agent like me, when I am facing this, I will have to make a choice at one time or another, because I cannot represent two companies going to different parts of the world; I have a conflict of interest. So, my gamble will be, should I go with this group of giants or with that one. I will have to make that choice. But, as far as the shipper is concerned, he should not worry. The box goes, and it will follow at the right place at the right time, and probably at a very interesting cost.

THE CHAIRMAN: Thank you, Dr. Camu. Yes, Mr. Bathurst?

MR. BATHURST: I'm sorry, sir, but I am still worried about the shipper's option of c.i.f. and f.o.b. And also, I think I am a little worried as to whether we are not addressing something here which is almost out of date, and we shouldn't be looking at the new multi-modal convention, the convention on multi-modal transport, which is door-to-door transport, with all the implications of the NVOCC, Non-Vehicle Operating Common Carrier. That, to me, is beginning to become an issue which we are not addressing. I think we are almost addressing something which is ten years out of date, which is the Code of Conduct. I hope I haven't sort of said the wrong thing by saying that but, you know, essentially the shipper is interested in door-to-door, and the terms of shipment.

MR. CAMU: I agree with you, because it is one of the reasons I gave in my speech that it was almost outmoded, that Code. I'm glad it's coming from your mouth instead of mine. But, it's true. The door-to-door concept now exists. There's been news for many years already, and there are many types or, let's say, samples that are modifications of that, but it already exists. It's a fact of life. So if you have that, then, why all the fuss, as I said before?

THE CHAIRMAN: Thank you.

MR. LOCHHEAD: As I'm billed in the program as Industry, Trade and Commerce, I'll keep that title, because there is some uncertainty as to whether it's Regional Industrial Expansion or External Affairs at the present time.

Someone has said, in fact, a number of the speakers have said that - have made the point in relative terms, the impact on our trade will be very small. That concerns me. They've been throwing out percentages. The percentages are correct. But, I would like to interpret these percentages into dollar figures. Our exports by water only in 1979, as far as I know, are something in the order of 2.8 billion dollars. That is to developing countries. I think that represents something in the

order of 3.3 million tons of neo-bulk and liner cargo. That's the best information that I have. Now, having said that, I think that makes us take a second look at the reality of this Code, and it is coming into effect. The relevance to the multi-modal thing is a separate subject, in fact, and deals exclusively on the liability of the boxes in this trade.

Back to the realities of the UNCTAD Code of Conduct. What will really happen here will be that a new standard - the UNCTAD Code - will become the new international standard, whether or not we ever get around to ratifying, or whether or not we decide not to. And that being the international standard, we will meet these definitions in any of our dealings with the developing world. I think that, in that reality, you have to look back at the Code again and say whether or not we like what it says, these are the standards which will probably be used in our relationships with the developing world. Mr. Nightingale, this afternoon, raised one of these definitions, and I think it is one that I would certainly like to hear the views of several members of the panel on, and that is the matter of designation of national carrier, because in our dealings with the developing world, sooner or later we are going to be asked that question. They are going to say, "If you want to do business with us, we require either a bilateral shipping agreement, or we would like you to nominate your national carrier". If we turn around and say, "Well, here is our list of national carriers, it adds up to twenty.", they are probably going to say that is unsatisfactory. I think that, as an element of our shipping policy, sooner or later, government is going to have to address that issue. What are the criteria for a designated national carrier? Or, what is our posture on that? I would particularly like to hear the views of John Turpin and Don Day on this matter. We already have Arthur Nightingale's. Thank you.

THE CHAIRMAN: Mr. Turpin?

MR. TURPIN: I think that we have to walk slowly through this problem. I'm not capable of forecasting what Canada should do over the next five to ten years. I would like to start by the Canadian government simply providing the kind of documentation which seems to be required under the UNCTAD Code, which is that a national shipping line is a vessel-operating carrier, which has its head office and management and effective control in that country. I can envisage my company writing to Transport Canada, or wherever we are going to have to write on this matter, and needing fairly quickly, such as in two or three weeks, something which says we are a national Canadian line. We've been operating in this country for over

fifty years. We clearly have our head office here, and a bunch of employees here. All I want is a letter that says that. Now, later on we may have to refine that more. There is some hint that there might later on be some competition amongst carriers to be the designated flag carrier. I'm not talking about that yet. I'm simply saying initially we may need something which says that we are a carrier. I feel very uncomfortable at the idea though of working in a trade, then finding another Canadian carrier wants in, and then turning around and saying, "Hey, I want to be the designated carrier." Maybe if I had Mr. Nightingale's experience I would want that but at this point, I don't.

THE CHAIRMAN: Thank you. Mr. Day?

MR. DAY: I would say that, number one, we may be getting a little bit far away from the practical aspects. The developing countries are not always going to have the wherewithal. They may decide, "It's great, let us have 40 percent.", and then decide later on that they cannot afford the ships, the charter, the management, whatever, to really take that into account. We have several examples today of countries who have unilaterally said, "Okay, we are going to go along with what UNCTAD says, on a 40/40/20, or whatever the percentages might be. We want cargo allocation." The interesting thing that I have found is that some of these, in fact all of them, to my knowledge, have forgotten it. They have just let it slip. Korea is one of them. The Republic of the Philippines. President Marcos put out a decree, I think it was in January, that they were going to follow the UNCTAD Code right down the line, and MARINA, their maritime bureau, was to be in a position to implement that within 60 days. The 60 days came and went, March 19th. Nothing has happened, and I doubt that anything will happen. That's a personal opinion, but I think there are a lot of less developed nations who might love to have a merchant marine, or a national flag carrier, who are going to be a long time before they see it.

THE CHAIRMAN: Thank you. Yes, sir?

MR. CHIDIAC: My name is John Chidiac, Massey Ferguson. I handle the traffic and transportation of the worldwide company.

The item that troubles me mostly, or primarily, in this liner Code is the primary emphasis, or almost total emphasis, on a rhetorical and political aspect of the Code, and I wonder - I address the whole panel here - I wonder if anyone thinks that we have the degree of sophistication required to cost transportation, or develop rates based on costs, like Mr. Nightingale spoke of, or for the cross-trades. Do we know from one

commodity to another, what each one should bear in the rates? How do we allocate that? I haven't seen hardly any discussion about it. I haven't seen too much in the worldwide archives of how you go about doing this. Every time I've costed out a vessel operation, I find the rates are well above the costs. So, I don't know what we are all talking about.

THE CHAIRMAN: Well, that certainly was a challenge. Boy, oh boy!

MR. NIGHTINGALE: With rates above cost, there's one reason why we strive so hard to get your business. We don't succeed because our rates are still too high and we are still a lot lower than cost. The whole question of the ability to administer this sort of thing is a very complex one, and everybody has concerns about that. I believe that the conferences already operate a very complex arrangement, and that they therefore can contribute to the administration of the Code, if it comes in.

I am not by any means supporting the Code, or 40/40/20. What really concerns me is the lack of a positive position being taken by Canada, as demonstrated by Gail's chart, where Canada was pure in the middle, without any government influence at all, whilst the rest of the world was dark yellow, with some measure of government influence. It is, in my view, imperative that Canada takes a position one way or the other, with the Code or with some other form of position, to say to the rest of the world, "Okay, Joe, if you are going to take this protectionist position, then we are going to meet you in that respect."

The whole rate question is one which perplexes me more than anybody in the liner service. I don't know how the hell we arrive at our rates, because the rates that we quote bear absolutely no relationship to the capital cost of the vessel, to the weight of cargo carried, to the volume which it occupies, all these tangible things. It's a mystery when compared to a tramp operation, or a dry and liquid bulk operation, you know. So I am afraid I cannot even begin to suggest a way of how the rate control would be implemented into a Code. Thank you.

THE CHAIRMAN: I very much appreciate this answer. I have, in one of my writings spent a lot of time trying to understand the cost problem. I think one just comes back to the fact that common carrier transportation, which includes liner services, is in some ways a unique industry. It does display unique economic characteristics. I have seen very sophisticated econometric models that have been developed for purposes of rate making, and I think it might be fair to say that in the operational detail they do not do better than the man with long experience. I

think, on the average, they do not do as well. I think it's often been said that rate making, in common carrier operations, is to a large extent an art. Now, of course, it's difficult to discuss art.

Mr. Turpin?

MR. TURPIN: First point. If it's true that rates off the east coast are above cost, would you please give me a call collect?

Secondly, rate making depends on the value of the commodity, on the shipper's ability to pay, the market variations that a shipper is encountering, and, therefore, goes to a conference and asks for some reduction in that freight rate. The conference becomes really a temporary partner of that shipper, and reduces their rate in order to keep the business going. It's better than shipping air. Another factor in the rate making is the ability of the owner to buy or build his ships at the right time. It has a tremendous effect on profitability. Face it. Ships themselves are a market, and a ship that's worth 10 million dollars, I'm talking about maybe a 6 or 7 year old ship worth 10 million dollars, can a year later be worth 20 million dollars, if the market takes off.

And then, of course, finally there is the question of whether it's a light cargo of high cube, or whether it's a heavy compact cargo. What happened in the one country that I know of that has a reasonably rational way of looking at conference freight rates on a continuing basis, and evaluating them together in partnership with the conference, based on cost, is the Australian Shippers' Council; and Industry, Trade and Commerce, or whatever else Graham Lochhead works for, did commission a study, or a report, to describe how that Shippers' Council worked. If I recall rightly, they started off with the existing freight rate structure, and they started to negotiate general rate increases only. The shipping conferences then explained their cost increases relative to the then current freight rates. It seemed to work reasonably well, and a whole lot of bargaining has gone on over the years, both by that Shippers' Council on the general rate increases and additionally by members of that Council, who have the right to negotiate something else, if they feel they can't continue their trade with the general increase that's being negotiated by that particular Shippers' Council.

THE CHAIRMAN: Thank you.

Our time is practically up. Dr. Camu has asked to make a comment.

MR. CAMU: I would simply like to make a suggestion to the last person. Before he calls collect to the west coast, why don't you contact a good shipping agent?

THE CHAIRMAN: Well, you have seen several practical solutions. You two will have to work this out between yourselves, I think.

It is five o'clock. I would like, on my behalf, and I'm sure on behalf of all of you here, to thank our speakers, who have presented an interesting program today, and also thank them for their willingness to respond to questions.

DAY TWO, May 13

Chairman:

Dr. G. Hariton
Executive Director
CTC Research

Session III: INSTITUTIONAL CONSIDERATIONS

Legal and Regulatory Framework Currently in Canada

Professor W. Tetley Q.C.
Professor of Maritime Law
McGill University

I. Introduction

Canada presently exempts liner conferences from the effects of the Combines Investigation Act[1] (Combines Act) in virtue of the Shipping Conferences Exemption Act, 1979[2] (S.C.E. Act) while Canadian policy has been to avoid regulation of deep-sea carriage in general.[3] There is some limited regulation of liner carriage, however, under the S.C.E. Act and the National Transportation Act[4] (N.T. Act).

The future of Canadian transportation must be looked at with care now because the Shipping Conferences Exemption Act, 1979[5] will only remain in force until March 31, 1984, unless the Government of Canada fixes a later date by proclamation. Meanwhile, the United Nations Code of Conduct for Liner Conferences (U.N. Code)[6] may well come into force in 1982. The U.N. Code could completely alter Canadian liner practices even if Canada is not a party to the Code because many of our trading partners intend to adopt it.[7]

Canada, therefore, has a number of alternatives open to it. It may continue the present exemption and limited regulation of conferences, it may withdraw the exemption, it may maintain the exemption and increase the regulation, it may adopt the U.N. Code with the E.E.C. Reservation[8] as that Reservation affects O.E.C.D. nations[9] or it may wait to see what other O.E.C.D. countries do, especially, the U.S., Japan, Australia and New Zealand.[10] Whatever Canada finally does, it is essential to understand the present Canadian legal and regulatory framework of water transport in general and, more particularly, liner and conference carriage.

II. The Statutes

There are four basic statutes which affect liner conferences in Canada.

The most important statute is the National Transportation Act[11] which sets out Canadian transportation policy and outlines the authority of the Canadian Transport Commission, (the C.T.C.) the principal regulatory body.

The Combines Act[12] is also important because it governs all industry and business in Canada in respect to restraints of trade and, therefore, affects liner conferences which are monopolistic in nature.

The Shipping Conferences Exemption Act, 1979[13] is centre to any study because it exempts conferences in certain circumstances from most of the consequences of the Combines Act.

Finally, the Railway Act,[14] although not directly affecting liner conferences, is important because the conferences have aligned themselves with one or other of the two Canadian railways, and their trucking systems. The Railway Act[15] states:

> No company shall, by any combination, contract or agreement, express or implied, or by other means or device, prevent the carriage of goods from being continuous from the place of shipment to the place of destination.

III. The Regulatory and Administrative Authorities of Canadian Shipping

The main regulatory authority is, of course, the Canadian Transport Commission created under Part I, section 6 of the National Transportation Act.[16] The Commission also has its own independent research department [17] permitting it to keep in the forefront of changes in world and national transportation.

The Department of Transport is involved, too, in virtue of the Department of Transport Act[18] and the Transport Act.[19] The Department of Transport enunciates policy through its Minister[20] who presents and adopts legislation and who is responsible for the administration of water transport under the National Transportation Act.

The Department of Consumer and Corporate Affairs is also involved because the Combines Act is under its authority, while both the Director of Investigation and Research and the Minister of Consumer and Corporate Affairs have specific authority under section 12(1) of the S.C.E. Act[21] to call for an enquiry. Section 12(1) reads:

> Notwithstanding section 3, the Director on his own initiative may, and on the direction from the Minister of Consumer and Corporate Affairs or at the request of the Restrictive Trade Practices Commission shall, carry out an inquiry concerning the operations of any shipping conference....

It can be seen from the above that the Restrictive Trade Practices Commission, an organism created under the Combines Act[22], has authority, as well, to intervene in liner conference matters.

Finally, the Department of Industry, Trade and Commerce takes an active part in shipping matters through the Transportation Services Branch

which is specifically dedicated to water transportation, for the most part from the shipper's point of view.

IV. Canadian Government Policy in Respect to Shipping

1) The Policy of the Department of Transport

Government shipping policy is set out in section 3 of the National Transportation Act[23] and is as follows:

> 3. It is hereby declared that an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the users of transportation and to maintain the economic well-being and growth of Canada, and that these objectives are most likely to be achieved when all modes of transport are able to compete under conditions ensuring that having due regard to national policy and to legal and constitutional requirements
>
> (a) regulation of all modes of transport will not be of such a nature as to restrict the ability of any mode of transport to compete freely with any other modes of transport;
>
> (b) each mode of transport, so far as practicable, bears a fair proportion of the real costs of the resources, facilities and services provided that mode of transport at public expense;
>
> (c) each mode of transport, so far as practicable, receives compensation for the resources, facilities and services that it is required to provide as an imposed public duty; and
>
> (d) each mode of transport, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute
>
> (i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or
>
> (ii) an undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports;

and this Act is enacted in accordance with and for the attainment of so much of these objectives as fall within the purview of subject-matters under the jurisdiction of Parliament relating to transportation.

2) Interpretation of Government Shipping Policy by the C.T.C.

The Canadian Transport Commission (Water Transport Committee), of course, is obliged, in its decisions, to follow and does follow policy as stated in the N.T. Act and as promulgated by the Minister of Transport. Nevertheless, as every common law lawyer knows and every civil law lawyer suspects, the interpretation of statutes by judges often seems to create policy, if not law, by defining and limting the law. The putting into effect of government policy by the C.T.C. provides a useful interpretation of that policy which can be seen in various C.T.C. decisions. An example of this is the C.T.C. decision in respect to Canadian Pacific Limited acquiring a one-third interest in Dart Container Line Co. Ltd. and an interest in the St. Lawrence River Containerized Freight Coordination Service.[24]

The decision is very revealing:[25]

> "It is important for Canada to be sensitive to the changing transportation needs of the present and future. Many shippers have become accustomed to the convenience and benefits of multimodal transport and they will continue to demand door to door container service in overseas trade. Shippers are also becoming more sensitive to freight rate levels and the cost of delays in delivery of goods. Canada is a major trading nation and requires transportation over huge land and ocean distances. Its industrial areas and commercial centres are within a short reach from the Southern borders where more extensive services to and from various parts of the world are available at competitive rates. The future of Canada's international trade and transportation system now depends more than ever before on its ability to develop an economic, efficient and adequate multimodal transport system capable of moving goods smoothly from an inland point in Canada to an inland point overseas as required by the user. To turn back the clock would mean Canada is prepared to risk the economic viability of its national transportation system and narrow its options and opportunities."

It is noteworthy that the clientele in this decision is the "user". The decision is also important because perhaps for the first time the necessity is expressed of a "multimodal transport system" which is "economic, efficient and adequate".

The whole Canadian transport system has to be integrated (road, sea, air and rail) because of the container revolution and it is very appropriate, in my view, that there is a single regulatory body in Canada, the C.T.C., to preside over this integration. It is especially fitting that the C.T.C. should give notice publicly in one of its decisions of the importance of multimodal transport and the necessity of an integrated transport scheme for Canada.

3) Policy of Industry, Trade and Commerce

One must also look at the stated transportation policy of the Department of Industry, Trade and Commerce.

Article 5 of the Department of Industry, Trade and Commerce Act[26] specifically requires the Department to:

> (c) improve the access of Canadian produce, products and services into external markets through trade negotiations and the promotion of trade relations with other countries and contribute to the improvement of world trading conditions;
>
> (d) promote the optimum development of Canadian export sales of all produce, products and services;
>
> (e) provide support services for industrial and trade development, including information, import analysis and traffic services;
>
> (f) analyse the implications for Canadian industry, trade and commerce and for tourism of government policies related thereto in order to contribute to the formulation and review of those policies.

The Transportation Services Branch of the Ministry defines its service and policy roles as follows:[27]

(1) Service Role

To inform, advise and assist Canada's business community, the Department, and other government organizations concerning transportation services and physical distribution.

(2) Policy Role

To participate in the development of transportation policies, programs and regulations that are responsive to the needs of Canada's industry, trade, commerce, tourism and business travel.

The Transportation Services Branch defines its policy activities as follows:[28]

2. Policy Activities

In ensuring that Canada's trade, tourism and industrial development objectives are reflected in the formulation of transportation and physical distribution policies, the Branch contributes primarily from the user's viewpoint, while supporting the participation of competitive Canadian transportation services. This is accomplished through direct consultation with business associations, companies and individuals, as well as through representation on interdepartmental, inter-governmental and non-governmental committees in both domestic and international fora.

The Branch also informs, advises and confers with other Departmental Branches concerning the impact of transportation policies, regulations and developments on trade and industrial assistance objectives, programs and projects.

4) Policy of Consumer and Corporate Affairs

The policy of the Department of Consumer and Corporate Affairs is essentially to protect and aid the Canadian consumer. It is stated as follows:[29]

... The Minister shall

(a) initiate, recommend or undertake programs designed to promote the interests of the Canadian consumer;

The Combines Act[30] is the main source of sanctions of the Department of Consumer and Corporate Affairs and section 32(1) of the Act outlines the offences:[31]

(a) to limit unduly the facilities for transportation, producing, manufacturing, supplying, storing or dealing in any product.

(b) to prevent or lessen unduly competition in ... transportation ... of a product....

(c) to otherwise restrain or injure competition unduly.

The Restrictive Trade Practices Commission was created under the Combines Act[32] and its duty is to investigate, at the request of the Director or Minister,[33] whether "a conspiracy, combination, agreement or arrangement has existed"[34] and to determine whether any of the offences of section 32 have been committed. It must then make a report in writing to the Minister at the conclusion of its proceedings.[35]

5) Policy of a Deep-Sea Fleet

Finally, there is Canada's oft expressed desire to have its own deep-sea fleet. Is this firm policy, or is it a long term aim for which no monies are presently appropriated and no legislation in planned? Perhaps the policy is best expressed today by Canadian National's investment in Cast and by various Canadian shipowners who are operating their ships offshore - Canadian Pacific Steamships Ltd. being a prime example?

The policy in respect to a deep-sea fleet is as follows:[36]

6.6 Policy

The Government has concluded that the primary objective of Canadian deep-sea shipping policy should be to ensure the continuing availability of adequate and economic shipping services as part of the overall transportation system serving Canada, with a secondary objective of being able to capitalize on significant opportunities.

After full consideration of all of the factors involved, the Government has concluded that, in the present circumstances achievement of these objectives does not warrant the provision of new tax or financial measures to support the development of a Canadian deep-sea merchant marine. In reaching this decision, which will be reviewed in the light of changing circumstances, the Government took into account the current depressed conditions in deep-sea shipping, the fact that Canada continues to receive adequate levels of service from foreign flag operators, and the economic implications of a diversion of scarce national resources into deep-sea shipping.

The Government has, however, also concluded that a number of related measures are necessary if Canada is to continue to rely on the forces of the international marketplace to supply most deep-sea shipping requirements, and if foreign flag vessels are to continue to play a primary role in the carriage of Canadian trade. It is this element of the suggested policy that sets it apart from the approach taken by Canada since the late 1940s. Whereas the latter was essentially passive with no Government involvement, the new approach implies a more direct and active Government interest in deep-sea shipping matters, and envisages a number of measures to ensure that competitive market conditions are not unduly constrained and that our national interests are both promoted and protected.

Such measures will include continued support for competitive conditions in international shipping as the most desirable means of ensuring adequate and economic

shipping services. In the absence of any major changes in the current situation, this approach will also imply resistance to any proposals that would deny Canada access to commercial shipping services from any particular country or group of countries. Close monitoring by the Government of the extent, nature and impact of foreign flag participation in Canada's external trade and of technological developments will be required to ensure a quick response should Canadian interests be adversely affected or favourable opportunities arise.

The Government intends to proceed with legislation to give it broad powers to obtain information and to act where Canadian shipping interests are threatened by the actions of a foreign Government or carrier. Legislation would include the power to permit the designation of "Canadian shipping lines", including companies located in Canada but not operating vessels under Canadian registry, to enable the Government to respond to the requirements of a number of developing countries. It will also provide for the possibility of shipping agreements with one or more countries to ensure that a Canadian company is able to participate in trades from which it otherwise would be excluded by the actions or policies of other Governments.

The Government intends to assess the possibilities for Canadian flag participation in the shipment from Canada of aid and certain commercial cargoes. With respect to Arctic shipping, the Government intends that, as a condition of approval to export unprocessed or partially processed resources, Canadian registered vessels must be used if they are available at reasonable cost. The Government is also prepared to consider, on their merits and on an ad hoc basis, substantiated requests for assistance related to the use of ships both registered and built in Canada for use in the Arctic.

The Government is of the view that the measures outlined above represent an appropriate framework for Canadian deep-sea shipping policy, and it is the intention to implement the various elements of the policy over the months to come. The policy framework, and the individual elements of it, will of course be subject to review as and when circumstances change, either in Canada or internationally.

V. Commentary - Different Authorities, Different Policies Or Aims

It has been noted above that there are three departments - the Department of Transport, the Department of Industry, Trade and Commerce and the Department of Consumer and Corporate Affairs concerned with liner conferences as well as two independent commissions - the C.T.C. and the

Restrictive Trade Practices Commission. They all have slightly differing policies or aims. Nevertheless, there seems to be no real conflict among them, in fact, the present organization not only provides a rational system of checks and balances but it reflects the diverse nature of Canada's economy and the competing forces which form Canada's water transportation system.

Transport Canada is concerned with "economic, efficient and adequate transportation" ... to protect the interests of the users and at the same time to protect various modes of transport and to avoid "unreasonable discouragement" ... "of primary and secondary industries ... in or from any region of Canada...."[37]

The C.T.C., an independent regulatory body, has so far emphasized as little regulation as possible. However, by its authority, its hearings, and its comprehensive research department, it has prepared itself and Canadian carriers and shippers for the future.

Industry, Trade and Commerce emphasizes the role of Canadian shippers - "they are our clientele" I was told by at least two Industry, Trade and Commerce officials. And quite properly, therefore, the Department created and now is supportive of the Canadian Shippers' Council although the Council was designated under the S.C.E. Act by the Minister of Transport.[38]

Consumer and Corporate Affairs has the avoidance of monopolies and restrictions of trade as its basic policy in respect to shipping. The Department officials with whom I met were oriented in this direction and it is fitting that the watchdog should not be the Department of Transport or the C.T.C. or the Department of Industry, Trade and Commerce, but rather, the Restrictive Trade Practices Commission.

The phenomenon of two different departments or commissions of government protecting and administering the same segment of the economy is a healthy and common practice. The democratic confrontation of the Department of Agriculture and the Department of Consumer and Corporate Affairs over food prices is an example.

A similar healthy rivalry existed between the Quebec Securities Commission, the Quebec Ministry of Financial Institutions and the Quebec Ministry of Industry and Commerce. The public was well served by the divided authority and certainly much better than if one single Ministry had been obliged to reconcile different views from different parts of the economy. The final decisions where conflicting policies could not be reconciled were taken in Cabinet or in Cabinet Committee and this proved to be effective.[39]

VI. Right to Investigate and Regulate Conferences under the Law

Although certain practices of shipping conferences are exempt from the Combines Act, the conferences may still be subject to considerable investigation and to some regulation in virtue of a number of different procedures in the law.

1) The Shipping Conferences Exemption Act, 1979

(a) Sections 4(a) and 4(b) of the S.C.E. Act stipulate that any contract or practice of a member of a conference that restricts competition to a degree that exceeds what is reasonable to maintain stable rates or service is prejudicial to the public interest and is thus subject to investigation and an order by the C.T.C. under section 23 of the National Transportation Act.

(b) Section 6 of the S.C.E. Act stipulates that exemption by section 5 from the Combines Act does not apply to three specific cases:

(i) agreements to use a vessel as a "fighting ship";

(ii) agreements to refuse to transport cargo of a party who has used a carrier outside the conference;

(iii) agreements to limit the use of port facilities by a carrier outside the conference.

In consequence, an offending conference would be subject to investigation, conviction and fines under the Combines Act.

(c) Section 12(1) of the S.C.E. Act stipulates that the Director of Investigation and Research under the Combines Act may conduct an enquiry of what is suspected to be a breach of the S.C.E. Act using the procedures of the Combines Act.[40] Sanctions for non-compliance of any obligation imposed by the S.C.E. Act are found at section 18 of the S.C.E. Act.

(d) Members of shipping conferences, when called upon, must meet with shippers groups i.e. the Canadian Shippers' Council - section 15(1).

The Canadian Shippers' Council was founded in 1966 and was designated under the S.C.E. Act by the Minister of Transport[41] in 1979 to represent the interests of importers and exporters. The Council works most closely with the Department of Industry, Trade and Commerce.

The Minister of Transport in his annual report for 1981 stated:[42]

> During 1981 bunker surcharges remained a matter of concern to the Canadian Shippers' Council. This body, designated by the Minister of Transport as a shipper group with which conferences are obliged to meet, met with the Water Transport Committee of the Commission during which the matter of bunker surcharges and the difficulty of the Council securing pertinent data from conferences was discussed. As of December 31, 1981, the Canadian Shippers'

Council had made no application to the Commission for regulatory resolution of the problem. The Council also reported that problems with one conference concerning the assessment of currency adjustment factors had been identified but it was anticipated that the matter would be resolved. Negotiations with one conference were taking place to devise a new standard form of patronage, or loyalty, contract.

(e) The S.C.E. Act contains a number of requirements in respect to the production of documents.

(i) Every member of a conference must file contracts and agreements, tariffs etc. and all changes in them - section 7.

(ii) Each member of a conference shall have an office in Canada where it operates and shall keep available to the public all documents as above - section 13 and section 14.

(iii) The Governor-in-Council may make regulations to require the production of other documents but this information shall be confidential to the government - section 16.

2) The National Transportation Act

(a) Section 23 of the N.T. Act stipulates that any act or omission of a carrier which prejudicially affects the public interest in respect to tolls or conditions of carriage shall on complaint be subject to an enquiry by the C.T.C.[43] and a possible order requiring the removal of the toll or condition.[44]

(b) Section 27 of the N.T. Act permits an enquiry by the C.T.C. of any acquisition by a transportation company of a transportation business carried on in Canada. The C.T.C. may disallow the acquisition if it unduly restricts competition or is otherwise prejudicial to the public interest.

(c) Section 55 of the N.T. Act permits appeals of decisions of the C.T.C. to the Federal Court of Appeal on any question of law or jurisdiction. Applications to the Federal Court of Appeal in respect to C.T.C. decisions are also permitted under section 28 of the Federal Court Act.[45] Such an appeal could be based on natural justice, an excess of jurisdiction, an error in law or an error of fact made perversely or capriciously.

(d) Section 59 of the N.T. Act permits the C.T.C. to issue an interim ex parte order authorizing, requiring or forbidding anything that the Commission on application may authorize, order or forbid.

(e) Section 64 of the N.T. Act permits appeals to the Canadian Cabinet (Governor-in-Council) who may, in its discretion, vary or rescind any order, decision, rule or regulation of the C.T.C.

VII. Commentary on Canadian Regulation of the Shipping Industry

1) No Scheme to Regulate

It is soon apparent from a reading of the various statutes that there is no integrated scheme in Canada for regulating the non-coastal and non-internal shipping industry nor is such a scheme intended. In other words, we have not followed the American practice under the U.S. Federal Maritime Commission[46] or the practice in air carriage in Canada.[47] There are means of calling for an investigation into certain acquisitions of water carriers in Canada or into certain tolls and charges or into certain acts in restraint of trade not excluded by the S.C.E. Act but there is no policy and no administrative body to regulate external shipping. In re A.G. of Nova Scotia v. C.T.C.[48], the province of Nova Scotia presented such an argument:

> On behalf of the Attorney-General it was submitted that the statute as a whole represented a statutory scheme for regulating the transportation industry.

Thurlow J., however, rejected it outright.

2) Commentary: Shipping Conferences Exemption Act, 1979

(a) There have been no complaints under sections 4(a) and 4(b) of the S.C.E. Act so that there have been no investigations by the C.T.C. Similarly, there have been no investigations under sections 6 and 12, perhaps because Combines Act enquiries are presumed to be so expensive. Shippers have said, for example, that an enquiry by members of the pulp and paper industry of bunker surcharges by the railways has cost them $500,000 with no visible results and the decision is still awaited.

(b) The principal means of control under the S.C.E. Act is the filing of documents with the C.T.C. by liner conferences and liner operators in virtue of sections 7, 13 and 14. In 1980, 33,320 documents were filed[49] and in 1981, 29,061 documents.[50] In 1980, 127 persons[51] from government research organizations and the private sector inspected these documents. In 1981, only 50 persons studied the documents.[52]

It is clear from the foregoing that the S.C.E. Act is modelled after the Blue Sky Laws of North American security legislation.[53] The principal behind such legislation is that by being forced to file all their agreements and documents the shipping conferences will refrain from nefarious practices which would restrict trade. Publicity, it is hoped, will limit the profiteering of shipping cartels and

monopolies. The publicity had some effect in securities legislation but it was prosecutions by the authorities of abuses which had more effect while withdrawal of licences (or in the case of liner operators of their exemption from the Combines Act) which will have the most effect. This I was informed, by three different attorneys for three different liner services.

3) Not an Adversary Contest

A hearing under section 27(4)(a) of the N.T. Act is quite limited in its formalities; it is, in effect, not a hearing at all but an enquiry. This was made clear in Seafarers International Union v. C.N.R.[54] There is no right for those who object to an acquisition to be heard "to contradict any information"[55] nor do they have the right "to adduce evidence"[56] or to "make submissions".[57] Quite simply the enquiry does not create an "adversary contest".[58]

Pratte J. concluded:[59]

In my opinion, the sole right of an objector under section 27 is the right to object against a proposed acquisition (with everything that this right may imply); that section does not give an objector the right to participate in a trial for the purpose of determining the validity of the objection. I must add that I do not see in this legislation scheme anything that I consider unfair or contrary to natural justice.

Le Dain J. was also explicit:[60]

The right to make objections is one thing; the right to have the issue determined upon the basis of the objections is another. Although an objection is necessary to give the Commission the jurisdiction pursuant to section 27 of the Act, the objections do not define the extent of the issue before the Commission. It is true that the same language is used to describe the grounds upon which an objection may be made and the question upon which the Commission must come to an opinion. This does not mean, however, that the Commission can only disallow if it comes to the opinion that the objections are well founded. It may not be persuaded by the objections but its own additional investigation and consideration of the proposed acquisition.

Once the Commission has been activated by an objection it is not confined to determining whether the objector has made a case. The issue is not to be determined as between the party proposing to make the acquisition and an objector. An objector is entitled to a full opportunity to make his objection but not to meet every consideration that may form the basis of decision.

The foregoing judgment is cited and relied on by the Water Transport Committee of the C.T.C. in its decision of March 15, 1982, in respect to the acquisition by Canadian Pacific Ltd. of part interest in Dart.[61]

4) A Means Only to Object, Not to Disallow

Section 27 of the N.T. Act is only a means of objecting to an acquisition, it is not a means for initiating a disallowance as was held by Thurlow J. in re A.G. of Nova Scotia v. C.T.C.[62]

> It will also be observed that in the procedure set out in section 27 the course open to a party affected by a proposed acquisition is not one of initiating an application for disallowance but one of objecting to the proposed acquisition, after which there may or may not be a public hearing: see Seafarers International Union v. C.N.R. Co. et al.

5) Acquiror Must be Canadian

Does an acquisition under section 27 of the N.T. Act have to be by a Canadian carrier?

Section 27 stipulates that the acquiror is any type of carrier, "to which the legislative jurisdiction of the Parliament of Canada extends...." This has in practice meant a Canadian carrier so that Canadian Pacific Limited or Canadian National Railways must give notice and are subject to section 27(1) when they propose to make an acquisition. It can be strongly argued, however, that "the legislative jurisdiction of the Parliament of Canada" applies as well to foreign companies under section 91(25) "aliens" of The British North America Act, 1867.[63] This seems reasonable particularly in cases where a foreign corporation is acquiring a Canadian transportation business.

6) Holding Company Acquirors

Another problem concerning section 27 of the N.T. Act is in respect to the term "company engaged in water transportation". In two recent cases, the C.T.C. Water Transport Committee has ruled that acquisitions by holding companies which do not themselves actually engage in water transportation are not acquisitions under section 27 of the N.T. Act.

The first decision was in respect of the acquisition of Newfoundland Steamships Ltd. shares by Crosbie Enterprises Ltd., a holding company.[64] The transaction would also have reduced the holdings of another holding company, Northmount Holdings Ltd. Neither holding company was a carrier per se but both were involved in transportation in that Crosbie Enterprises was the holding company of the Crosbie shipping family of Newfoundland and Northmount Holdings was the holding company of the Clarke shipping family of Montreal. The transactions all formed part of the agreement whereby "some of the services previously performed by Chimo Shipping were to be integrated with those of Newfoundland Steamships".[65]

The Committee held, nevertheless, that section 27 of the N.T. Act did not apply to the transaction.

The reasoning of the Committee was as follows:[66]

> There is no doubt that in the re-arrangement of shareholdings in Newfoundland Steamships an acquisition of an interest in the business or undertaking of that company took place; the level of ownership of Northmount Holdings was reduced from 70 per cent to 50 per cent, while that of Crosbie Enterprises became 50 per cent. But this result is of no concern to the Committee because neither Northmount Holdings nor Crosbie Enterprises is within the class of persons whose acquisitions section 27 affects. Neither company is or ever has been a railway company, commodity pipeline company, company engaged in water transportation, or a person operating a motor vehicle undertaking or an air carrier. Accordingly, we find that section 27 does not apply to the acquisition of shares in Newfoundland Steamships.
>
> There is also no doubt that Newfoundland Steamships acquired certain assets from Clarke Transport Canada and Chimo Shipping in the various transactions of January 1, 1981, or that Newfoundland Steamships is a "company engaged in water transportation". But was what was acquired "an interest in the business or undertaking" of either Clarke Transport Canada or Chimo Shipping? We think not.

The Committee concluded:[67]

> In summary, we find that there was an acquisition of an interest in the undertaking of Newfoundland Steamships, whose principal business is transportation, through purchase of some of its shares. Because the acquirer of those shares was not a railway company, commodity pipeline company, company engaged in water transportation, or person operating a motor vehicle undertaking or an air carrier to which the legislative jurisdiction of Parliament extends, section 27 of the National Transportation Act does not apply to the transaction. We also find that when Newfoundland Steamships, a company engaged in water transportation within the meaning of section 27, acquired ships and other assets, this did not constitute the acquisition of an interest, directly or indirectly, in the business or undertaking of any person whose principal business is transportation.

The second decision[68] was rendered to the same effect but there was a very strong dissent. It was held at the same time by the C.T.C. that acquisition of a holding company which is not itself a carrier is not covered under section 27 of the N.T. Act. Newfoundland Capital

Corporation Ltd. had acquired shares in Northmount Holdings Ltd. and Clarke Transport Canada Inc. and the question was whether Northmount Holdings Ltd. as holding company for an air carrier was itself an air carrier. The majority said no but Commissioner Langlois in dissent succinctly set out the dilemma:[69]

> It seems to me that if holding companies are not caught by section 27 of the National Transportation Act, the Commission would be abandoning to holding companies the power to coordinate and harmonize the operations of carriers. I fear that holding companies would exercise that power not in the public's interest but according to their own interest. I feel duty bound therefore to interpret the words "air carrier" as I have, not only to ensure that the specific and immediate intent of section 27 is attained, but also to ensure that the broader object set out in section 21 is also attained.
>
> My colleagues would have it that section 27 would apply to an acquisition by a holding company if it were shown that the holding company had been set up with the intention of circumventing section 27. But, absent that intention, the holding company is free to frustrate section 27. Hypothetically, Newfoundland Capital Corporation Limited, it being a holding company, is free (that is free from section 27 of the National Transportation Act) to acquire an interest in all carriers of all modes. Unlikely as this hypothesis may be, it illustrates nonetheless how meaningless section 27 becomes according to my colleagues' interpretation. With due respect, it seems to me that more attention should be paid to the intention behind section 27 and less to the intention behind the setting up of the holding company.

7) Initial and Subsequent Acquisitions

Section 27 of the N.T. Act applies not merely to the initial acquisitions but to subsequent acquisitions of water carriers as was made clear in the Water Transport Committee decision of October 13, 1981, in the matter of C.N. acquisition of 18 per cent of Cast.[70]

8) Acquisitions of Common and Preferred Shares

Section 27 of the N.T. Act applies not merely to the acquisition of common shares but to the acquisition of preferred shares.[71]

9) Orders Under Section 59 of the N.T. Act

(a) The C.T.C. has authority under certain circumstances to issue orders under section 59 of the N.T. Act Nevertheless, this authority does not extend in respect to disallowances of an acquisition under section 27 of the N.T. Act[72]

(b) Section 59 of the N.T. Act only applies to proceedings before the C.T.C. but one gathers that it could be used in respect to proceedings under section 23 of the N.T. Act[73]

VIII. Summary as to the Present Legal and Regulatory Framework in Canada

The Canadian government regulation of liner trades is carried out by the competing but intelligent interaction of three departments and two independent regulatory commissions all with very similar aims. The main policy consideration is to provide Canadians (manufacturers, farmers, businessmen and consumers in general) with efficient inexpensive transportation of goods to and from Canada.

There is no real regulation of liner conferences per se rather they are obliged to file all agreements between members of a conference, all patronage agreements and tariffs and all changes to those documents. The documents may then be viewed by the public. A shippers' council provides immediate negotiation and conciliation of problems. Certain acquisitions of certain carriers require approval by the Canadian Transport Commission under section 27 of the National Transportation Act.

The main sanction facing conferences is an enquiry under the Combines Investigation Act and the possible loss of the exemption under the Shipping Conferences Exemption Act, 1979. The C.T.C. as well may issue orders in case of violations of the N.T. Act as modified by the S.C.E. Act.

It must be said, however, that joined with the above-described limited government intervention in respect to liner conferences are two other important forces - pressure put on the conferences by the Canadian Shippers' Council and the effects of non-conference carriers. It is the interaction of these three forces that "regulate" liner conferences in Canada. The present Canadian legal and regulatory system permits, if not stimulates, those three forces.

FOOTNOTES

[1] R.S.C. 1970 c. C-23.
as amended by R.S.C. 1970 (1st Supp.) c. 10,
R.S.C. 1970 (2nd Supp.) c. 10,
S.C. 1974-75-76 c. 76,
S.C. 1976-77, c. 28.

[2] S.C. 1978-79, c. C-15.
(succeeding the Shipping Conferences Exemption Act, 1970 being R.S.C. 1970 (1st Supp.) c. 39.

[3] Inland water carriage is regulated by the Transport Act, R.S.C. 1970 c. T-14.

[4] R.S.C. 1970, c. N-17.

[5] Supra note 2 at section 23.

[6] United Nations Convention on a Code of Conduct for Liner Conferences, 1974. U.N. Document E.75/11/D.12, New York, 1975.

[7] Both the United Kingdom and the Federal Republic of Germany have introduced ratifying legislation.

[8] OJ No 121/1 17.5 1979 p.i.

[9] Council Regulation (EEC) No. 953/79 Art. 4.

[10] G.M. Sinclair also suggests that other alternatives are available as well: Canada could adopt only those provisions of the Code which are advantageous or Canada could enact defensive legislation. Seminar on Canadian Perspectives on the UNCTAD Code of Conduct for Liner Conferences, Montreal, May 12-13, 1982.

[11] Supra note 4.

[12] Supra note 1.

[13] Supra note 2.

[14] R.S.C. 1970, c. R.-2.

[15] Ibid at section 288(1).

[16] Supra note 4.

[17] R.S.C. 1970 c. N-17, section 22(1)(b). CTC powers in respect to shipping are found at section 22(2)(a)-(g).

[18] R.S.C. 1970, c. T-15.

[19] R.S.C. 1970, c. T-14.

[20] R.S.C. 1970, c. T-15, section 4(1).

[21] Supra note 2 at section 12(1).

[22] Supra note 1 at section 16 et seq.

[23] Supra note 4 at section 3.

[24] W.T.C. decision 2-82 of March 15, 1982, C.P. Ltd. acquisition of Dart shares.

[25] Ibid at pp. 22, 23.

[26] Department of Industry, Trade and Commerce Act, R.S.C. 1970, c. I-11 at section 5.

[27] Internal Documents of the Transportation Services Branch of the Department.

[28] Ibid.

[29] Department of Consumer and Corporate Affairs Act, R.S.C. 1970 c. C-27.

[30] Supra note 1.

[31] Ibid at section 32(1).

[32] Ibid at section 16(1).

[33] Ibid at section 18(1)(a) and (b).

[34] Ibid at section 19(3).

[35] Ibid at section 19(1).

[36] T.P.-1676 paragraph 6.6.

[37] Supra note 4 at section 3.

[38] Supra note 2 at section 15.

[39] The Quebec government and the author in particular were often criticized for this divided authority but in the long run even the critics found it to be an effective and valid form of regulation.

[40] R.S.C. 1970, c. C-23, section 12(2).

[41] S.C. 1978-79, c.15 section 15(2).

[42] 3rd Annual Report to Parliament on the Operations of the Shipping Conferences Exemption Act deposited by Jean Luc Pepin, March 19, 1982 for the year 1981 at p. 2. It has been suggested that the Canadian Shippers' Council should be strengthened financially by outside sources or the government. It has also been suggested that its authority be strengthened by changes in the law.

[43] R.S.C. 1970, c. N-17, section 23(2).

[44] R.S.C. 1970, c. N-17, section 23(4).

[45] R.S.C. 1970, 2nd Supp. c. 10 at section 28.

[46] The Shipping Act, 1916 vested regulatory jurisdiction in the United States Shipping Board. Executive Order No. 6166 of June 10, 1933, abolished the Board and transferred its functions to the Department of Commerce. An act of June 29, 1936, 49 Stat. 1987, created the United States Maritime Commission and transferred the functions of the former United States Shipping Board thereto. Reorganization Plan No. 21 of 1950, 64 Stat. 1273, transferred the regulatory functions of the United States Maritime Commission to the Federal Maritime Board. Reorganization Plan No. 7 of 1961, 75 Stat. 840, established the Federal Maritime Commission and transferred to it, inter alia, all functions under sections 14-20 and 22-33 of the Shipping Act, and abolished the Federal Maritime Board.

[47] Aeronautics Act, R.S.C. 1970, c. A-3.

[48] (1981) 127 D.L.R. 724.

[49] 2nd Annual Report to Parliament on the Operations of the Shipping Conferences Exemption Act, dated March 20, 1981 and deposited by Jean Luc Pepin, Minister for the year 1980 at p. 2.

[50] 3rd Annual Report to Parliament on the Operations of the Shipping Conferences Exemption Act deposited by Jean Luc Pepin, Minister for the year 1981 at p. 2.

[51] Supra note 37 at p. 3.

[52] Supra note 38 at p. 3.

[53] The American "blue sky" security laws have as their purpose the disclosure of information pertaining to the financial condition of the issuing corporation. This is achieved by virtue of the registration requirements established under the Security Act of 1933. See 15 USCS subsection 77(f) et seq. The registration of a statement and prospectus is governed by Regulation C of the Securities Act of 1933 (Reg. S.230.400 (Rule 400) to S.230.494 inclusive). No.33-3519, October 11, 1954, 19 F.R. 6727; amended in Release No. 33-6383 (para. 72,328), March 3, 1982, effective for all documents filed after May 23, 1982, 47 F.R. 11380.

[54] [1976] 2 F.C. 369.

[55] Ibid at p. 375.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Ibid at p. 381.

[61] W.T.C. decision 2-82, March 15, 1982 at p. 6.

[62] Supra note 48 at p. 727.

[63] 30 and 31 Vict. c.3 (U.K.) section 91(25).

[64] W.T.C. decision 17-81 of November 13, 1981, Crosbie Enterprises Ltd. acquisition of Newfoundland Steamships Ltd. shares.

[65] Ibid at p. 3.

[66] Ibid at pp. 10,11.

[67] Ibid at p. 11.

[68] W.T.C. decision 3-82 of March 12, 1982, Newfoundland Capital Corporation acquisition.

[69] Ibid at p. 3.

[70] W.T.C. decision 16-81 of October 13, 1981, C.N. acquisition of Cast shares.

[71] Ibid.

[72] Re A.G. of Nova Scotia v. C.T.C. (1981) 127 D.L.R. (3d) 724.

[73] Ibid at p. 730.

Commercial - Government Relations

Mr. S. Cantin*
Commission Counsel
Canadian National

Ladies and Gentlemen

The emergence of the Convention on a Code of Conduct for Liner Conferences was originally perceived, in western trade circles, as unwarranted state intrusion into private enterprise. It therefore met with stiff opposition from these quarters which, of course, had difficulty in understanding the motivation of its promoters since they had managed very well to accommodate themselves to the theories of national sovereignty as a preliminary to intrusion into their international trade.

However, all soon came to the realization that in everyone's interests, it could not but be to the advantage of each intervener if the general sense of dissatisfaction could nonetheless preserve a system of international sea-borne trade whereby they could hold on to certain privileges while others could acquire similar ones. Of course, the common denominator was the recognition of a mixed system in which the state, like it or not, would have to assume a supervisory role so that as everyone hoped, a coherent and balanced system of sea-borne trade could be developed. Thus there came about a weakening of the nearly thousand-year-old absolute autonomy of a segment of international trade where state intrusion had suffered its worst setbacks.

It is certainly not my intention to analyse in detail the various provisions of this Code - some of the other speakers are better able to do that. Instead, I shall take a few minutes to determine the level of state interventionism that Canada's accession to and ratification of this Code would likely require. Of course, according to the very philosophy underlying North American trade and, incidentally, that of its major trading partners, that interventionism would be minimal, its role being perceived as that of a supervisor rather than a fullfledged participant. This will be a distinct role in other countries where the national fleet rather than the personal initiative of its nationals plays a key role in this trade jungle.

It must therefore be concluded that state intervention in Canada will have to be circumspect and supportive, especially where powerful relationships would be disrupted. In this regard, at least three levels of this relationship between the state on the one hand and its shipping entrepreneurs on the other can be identified as follows:

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* Mr. Cantin was unfortunately not able to attend the seminar and his paper was read by Mr. André Pageot.

1. intergovernmental relations;
2. relations between the state and its shipowners;
3. relations between trading partners themselves.

1. Intergovernmental relations

By its very nature, the Code of Conduct calls for state interventionism in order to organize and regulate liner conference trade between two or more countries, merely by setting this mechanism in motion through a country's ratification of the Convention. This trade is thereupon institutionalized and the particular rules of the Convention are applicable. To this end, the state is invited, in consultation with its nationals, to define the following subjects:

(a) precise nature of the regulated trade;
(b) identification of the participating partners;
(c) date of coming into force;
(d) exchange of commercial data, including the volume of traffic, its forecasts and its fluctuations having regard to conference and non-conference trade;
(e) legal status of traffic in transit coming from or going to a third country, or operations out of a third country;
(f) the role of trade missions and assignment of certain trades to liner conferences;
(g) and so forth.

However, it is important to point out that all these activities should not have to rely on a specific government bureaucracy because these activities can be assumed full well within the framework of existing structures, on the obvious condition, however, that there are predetermined, precise and open channels of communication between the state and its shipowners.

In short, a special advisory group would be perfectly able to handle this task since such structures exist at the present time within the federal public service, inter alia, in the federal Department of Transport. Admittedly, the potential for problems would be enormous if the state were to opt for excessive interventionism by trying to take over from the entrepreneurs themselves. However, if, on the contrary, the national transportation policy establishes, as a principle of utmost importance, free competition and market forces rather than socio-political imperatives, difficulties should then be minimized all the more.

This latter hope should form the cornerstone of the dynamics of an eventual Canadian merchant marine fleet and of the expansion of the shipping trade. Lastly, these intergovernmental discussions should call on the active consultation, if not participation, of the trading circles themselves.

2. Relationship between the state and its shipowners

The Code of Conduct, by its very nature, must necessarily call upon, as some earlier comments illustrate, relationships between the state and its

shipowners. If some activities had to rely on a regulatory process, it seems they would fall into this category. Given the very nature of certain rules relative to the prerequisites for carrying on this commercial activity, i.e. (1) conference trade per se, (2) quality of the national shipping line, and (3) right of accession and withdrawal, numerous confrontations in this area may be possible. Moreover, in Chapter 1 of Part One of the Convention, it is specifically recognized that the government or a body designated by the government must perform the functions ascribed to it by the Code. In view of the democratic tradition of our regulatory institutions, it is patently obvious that a quasi-judicial regulatory agency must acquire such a mandate so that the interested parties will be able to put forward their respective arguments, offering at the same time an active and dynamic role to the group of shippers who unquestionably have an interest in the matter.

Viewing the current state of our institutions, it would seem that the Canadian Transport Commission is altogether suited to this task, just as it has already partly inherited it with regard to the regulation of liner conferences, the Transport Act (Part II), coastal trade, acquisition of interests between carriers and so forth.

Needless to say, its mandate should be specific rather than general so as not to substitute itself for the machinery for the settlement of internal disputes in the operation of the liner conference themselves, that is, conciliation and arbitration.

However, a regulatory agency should not be required to deal purely with tortious or conflictual situations but should also have a consultative and research dimension, as section 22 of the National Transportation Act already provides in that the agency, because of its specialized status, advises the government on policy and provides information to the trading partners themselves.

In this regard, the golden rule would therefore be to limit the mandate to a minimum of administrative recourses, as an incentive for the various partners to settle internal disputes through the current channel of negotiation, prompted by trade imperatives rather than political dicta. In short, the aim of the spirit of such legislation or regulations should be consultation rather than confrontation since the same holds true for the Canadian public interest versus private interests or those of foreign countries.

3. Relations between the trading partners themselves

Aware that the drafting of the Convention was an intrusion into private areas of trade relations, its drafters took care to provide internal machinery for conciliation and arbitration, thus carrying on an earlier tradition. No doubt for fear that harder stances might possibly be taken, the institutionalization of this tradition was undertaken with the enactment of rules which, in themselves, were not innovative but which sanctioned no less formal rules. That notwithstanding and following a non-interference policy, the state should give its outright endorsement to this non-interference policy except in extreme situations where the administrative recourse is the only alternative left.

Moreover, a contracting state, under item 3 of Annex II will have to report to the Review Conference, referred to in Article 52 of the Convention, on the model rules of procedure for international mandatory conciliation. It would seem, however, that that is the most appropriate mechanism for satisfying the respective claims of the parties and avoiding greater state interventionism in the long term.

Another no less important item of this Convention is contained in paragraph 2 of Annex II of the Convention concerning independent shipping lines or non-conference lines. An unusual fact, seemingly contradictory to the very concept of conference, they are required to adhere to the principle of fair competition on a commercial basis. That notwithstanding, the accused becomes the accuser and the regulated authority becomes the regulating authority, from which it can be anticipated that independent shipping (non-conference) lines that have continued to follow the principle of free competition might very likely in the long term see their operations threatened and find themselves in the accused's dock. That would be a neat way to bring them into the regulatory fold. Obviously, these possible disputes could not be settled by the protagonists themselves but rather, they should be submitted to the second level which we have already mentioned, namely relations between the state and its shipowners.

Conclusion

In conclusion, it should be noted that because of its broad field of application, the Convention on a Code of Conduct for Liner Conferences is a piece of complex international legislation. Nonetheless, its operating machinery ought not to create insurmountable difficulties since the liner conferences themselves have already developed similar rules over the years.

The new complexity of the subject stems for state interventionism to safeguard the interests of each country in international trade and, of course, the deliberations to which such dialogue give rise will not be devoid of political considerations.

This will be a constant danger and therefore, if Canada were to ratify this Convention, it would be incumbent on the state to determine precisely the rules of the game so that its nationals will derive most benefit from it. As for the administrative recourse, its field of application should be minimal, leaving it to the trading partners themselves to solve their problems through negotiation and conciliation so that the venturesome and entrepreneurial spirit will not be stymied by a regulatory straightjacket which Canada cast off in 1967.

Shipper - Conference Relations

Mr. I.G. Lochhead
Director
Transportation Services
Industry, Trade & Commerce

Before commenting on Shipper-Conference relations as defined in the Code, as it may be implemented in the future, I will first review the status of Shipper-Conference relations in Canada today, under our existing legislation.

After discussing the relevant Code provisions, I will close with an examination of alternative approaches which hopefully offer the possibility of improving upon the Canadian experience to date.

The National Transportation Act declares that an economic, efficient and adequate transportation system is essential to protect the users of transportation, and to maintain the economic well-being and growth of Canada. The Act also states that these objectives are most apt to be realized in a competitive environment.

In the maritime field we find domestic carriers are largely unregulated and operate in a competitive environment, in keeping with the thesis of the National Transportation Act. In international shipping, however, we find the Shipping Conferences Exemption Act, which exempts, for the most part, foreign based carriers, from prosecution under Canada's Combine Investigation Act.

One would think that Conferences, having won the concession of this exemption from national transportation policy, and the clutches of the Combines Act, would be anxious to demonstrate their allegiance to the intent of the enabling legislation, the Shipping Conferences Exemption Act.

Professor Tetley has stated that we have a system which is seemingly working. On the basis of recent public statements by the President of the Canadian Shippers' Council, perhaps we should question this proposition.Allow me to quote: "Shippers harbour the gnawing suspicion that because freight rates were agreed upon collectively and in camera among carriers, the level of rates were set to reflect the needs of the inefficient operator. This latent suspicion rose to the surface when OPEC action activated surcharges on bunker fuels purchased by the carriers. The substantial rise in bunker surcharges led shippers to a closer examination of the development. They found that some conferences charged much more (double or more) on Canadian exports than they did on cargo originating overseas and destined to Canada, despite the fact that fuel at Canadian ports was much lower at the time than that abroad. This disparity in surcharges persists today in various conferences, for example, those in the Japanese, Australia-New Zealand, and Brazilian trades, to name three. Inquiries and protests have, to date, been ineffective." The Shippers'

Council categorized this as "clearly a rip off and prejudicial to the Canadian exporter."[1]

The Canadian Manufacturers' Association has noted that the constantly rising surcharges destroy a shipper's ability to plan his transportation budget. "The Canadian manufacturer and exporter negotiates a rate with the marine line and predicates his marketing on this figure. Then the conferences come along and increase the surcharge."[2]

In other areas, the basic requirement in Section 15 of the Act for Conferences to provide shippers with "information sufficient for the satisfactory conduct of shipper-conference meetings" is perhaps the most abused. Hard data has not been forthcoming from most conferences, despite evidence that similar data is provided to exporters in other countries. In describing the balance of "bargaining power" between shippers and Conferences in Canada, eminent legal authority has summarized this as "power tilted in favour of the Conferences because of their control over information."

Canadian shippers are also concerned at current conference practice to peg "loyalty" agreements at 100% of shipments. If a shipper does not sign an agreement, he is charged a higher freight rate. The so called loyalty arrangement might better be described as a contract penalty.

Canadian shippers are not alone in experiencing difficulties in ocean transportation. In California, shippers of perishables recently termed conference transportation costs a critical barrier to trade viability. Most shippers feel that steamship lines and the conference system are "unresponsive" and "promote restraint of trade, rather than support of trade."[3] The European Shippers' Council issued a strong statement of condemnation of conference practices on bunker surcharges. After a "long and thorough" investigation, the ESC liner committee concluded "the impression is justified that bunker adjustment factors (BAFS) are more than cost covering."[4] The ESC went on to oppose the consolidation of BAFS into the freight tariff wihtout watertight evidence (perhaps that should read oiltight) and consultation with the ESC. The Canadian Shippers' Council succeeded in persuading one major conference not to roll in the surcharge, but other conferences have proceeded to do so notwithstanding these objections.

To be fair, the conferences have their complaints as well, - unsubstantiated demands for rate reductions, cancelled bookings, and use of non-conference lines for some shipments, notwithstanding loyalty agreements being in place.

In summary, shipper-conference relations are quite strained. The Council describes conferences as "generally uncooperative". The question arises whether improvements could be expected if Canada embraced the Code of Conduct for Liner Conferences.

The intended objectives and principles of the Code are indeed admirable and unassailable. The Code is intended to reflect the following objectives:

(a) to facilitate the orderly expansion of world sea-borne trade;

(b) to stimulate the development of regular and efficient liner services adequate to the requirements of the trade concerned;

(c) to ensure a balance of interests between suppliers and users of liner shipping services;

(d) the principle that conference practices should not involve any discrimination against the shipowners, shippers or foreign trade or any country;

(e) the principle that conferences hold meaningful consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities;

(f) the principle that conferences should make available to interested parties pertinent information about their activities which are relevant to those parties and should publish meaningful information on their activities.

Most people would support those noble objectives and principles. But does the Code in fact deliver?

For shippers, the Code provides:

(1) A chapter regarding "relations with shippers". Matters include conditions of the loyalty agreement, dispensation from the loyalty agreement, availability of tariffs, a conference annual report and consultative machinery (Articles 7 to 11).

(2) Criteria for determining tariff classification, general freight rates, surcharges, and promotional freight rates. Provisions regarding general freight rate increases (minimum notice of 150 days or according to regional practice and/or agreement; consultation to take place within 30 days, and a minimum of 10 months between increases.) Provisions regarding surcharges which are to be regarded as temporary, and subject to consultation including the requirement that "conferences shall furnish data which in their opinion justify the imposition of the surcharge", Articles 12 to 17.

(3) Assurances that conferences will "provide regular, adequate and efficient service of the required frequency", (Article 19) and local representation (Article 21) so that "the views of shippers...are made rapidly known."

(4) Provisions for settling disputes (Articles 23 to 46).

Shippers could indeed benefit from a number of the Code provisions which are clearly described, however, it is disappointing to note that a number of ambiguities remain.

From a Canadian shipper's viewpoint, it is disconcerting to discover that a Code of Conduct was drafted as a means of promoting the growth of merchant fleets in the developing world, that cargo sharing is instituted in the face of shippers' traditional view that competitiveness and efficiency are more important than the flag of the carrier.

The complex mechanism for resolving disputes is untried; it is likely that testing over many years will be required before a conclusion can be reached as to whether the mechanism is workable. Furthermore, the mechanism is that of conciliation rather than arbitration. The mandatory nature of "international mandatory conciliation" as it is defined in Article 37 appears to relate only to the fact that it is mandatory to engage in the conciliation process - if you have not resolved the issue through direct negotiation.

The conciliation process involves an international panel of conciliators, consisting of experts in the field of law, economics of sea transport, foreign trade or finance. Article 37 clearly states that the recommendations of conciliators are binding only upon acceptance of the parties. While the same Article also stipulates that the parties can agree "before, during or after the conciliation procedure that the recommendation of the conciliators shall be binding", one might seriously question whether both parties would often agree to mandatory recommendations. The difficulties experienced by the Canadian Shippers' Council would suggest that conferences would likely refuse mandatory conciliation.

In a number of cases the description of shipowners' obligations is either too limited or is ill-defined and ambiguous, thus allowing perpetuation of recalcitrant conference behaviour. For example, the annual report described in Article 10 does not seem to provide the commercial facts of interest to shippers. There are too many instances of inadequate definition, such as Article 11-6, concerning consultation. With the words "parties shall use their best efforts to provide relevant information", it reads like Canada's SCEA revisited, and it is fair to conclude the problem of information disclosure that has infuriated the Canadian Shippers' Council will continue. Conferences will likely be quite selective in their response as Article 16-1 only requires them "as far as possible" to describe the circumstances bringing about proposed surcharges.

The Code calls for five months notice for general rate increases, and ten months between increases. While the principle may be correct, this arrangement may act against the interests of shippers, as it is conceivable that rates may be set at unduly high levels to allow for the worst inflationary scenario. To be fair, Article 14-9 does allow a shipper during consultations to negotiate a reduced period during which the rate increase applies, if he gauges this to be an appropriate business strategy.

A study recently completed for the Federal Maritime[5] Commission suggests a number of prospective dangers for shippers. It concluded that (a) competition for shippers' patronage would be reduced, (b) freight rates would be subjected to large increases every 15 months, (c) the inducement for shipowners to serve a wide range of ports would be reduced, and (d) conferences would lose much of their present discretion in many areas, including their control over freight rates and promotional rates.

A number of American cargo interests are clearly concerned about the Code and have gone on public record to this effect. The American Importers Association[6] oppose cargo sharing and the timing between freight increases which would encourage conferences to seek larger than normal rate hikes. The 3M Company[7] believes that the Code "includes very weak mechanics for settling disputes." A spokesman for General Electric criticized guaranteed shares of trade that the result would be poor service, high rates and a lack of innovation on the part of carriers. Such agreements work to the detriment of trade. "The name of the game is promotion of international trade, not shipping. When the reverse is true, you have a case of the tail wagging the dog."[8]

The major American carrier, Sea-Land Industries Inc., observed that the Code "will move worldwide liner shipping disappointingly away from the free enterprise system", and that it "consists of ambiguous and conflicting provisions that amount to a political document rather than a properly structured legal instrument upon which to base commercial transactions between nations."[9]

All in all, there appears to be sufficient misgiving being expressed to cause Canadians to take a very long and detailed look at the Code and its likely effects. It is not clear that the Code will improve relations between shippers and conferences. The chance of improving this relationship is reduced by the reservation of the European Economic Community[10] which states that the Code procedure for settling disputes shall not apply to EEC trades with other OECD countries. Had the EEC accepted the dispute settlement provisions, the process would have been more attractive to Canadian shippers. Here it has to be remembered that both the importing and exporting country have to agree to the Code in order for its provisions to be activated.

I have aired some of my doubts regarding the likelihood of the Code improving the future lot of the shipper, however sensible implementation and interpretation of the Code over a reasonable period could prove me wrong.

Given the uncertainties of the Code, it would seem more useful to enunciate the principles which we in Canada desire in shipper-conference relations. If I read the mood of Canadian shippers correctly, and this appears to be verified by John Turpin's remarks yesterday, their interest would be reflected in the following principles:

(1) Continued access to regular and efficient shipping service offering a reasonable rate of return to the carrier.

(2) Freedom from regulatory intervention.

(3) Meaningful consultation process with conferences.

(4) Access to an effective and expeditious dispute settlement mechanism.

(5) Legislation effecting the above.

What means are open to us to achieve these objectives? Some alternatives can be examined.

An obvious first solution to resolving shipper-conference confrontation is the approach advocated by certain U.S. interests: remove one of the parties from the scene! The conventional wisdom in Canada and among most maritime nations is, however, that, on balance, the benefits of conferences outweigh the disadvantages.

There are, however, many pressures to defend and promote national interests through adoption of a bilateral approach to shipping relations, and to the degree that this international trend accelerates, and shipper dissatisfaction with the performance of the cartels continues, the case for conference immunity from Combines legislation is somewhat weakened.

In the U.S., the status of shipper-conference relations is currently being debated. While the administration has registered its support for a system which would dispense with the need for shippers' councils, opponents to the proposal note that small shippers would be left with only recourse to the courts if Federal Maritime Commission registration and enforcement of rates is also terminated.

A second option is to change existing legislation. Can it be improved?

The Canadian Shippers' Council has experienced problems in securing "information sufficient for the satisfactory conduct of a meeting". Section 15 of the Shipping Conferences Exemption Act requires conferences to provide that information. The Council, therefore, has the option of approaching the Canadian Transport Commission as Administrator of the Act to ask for a definition of "sufficient information" or to lodge a complaint that the conferences are not complying with the Act. The course of later events would, of course, be difficult to predict. It is possible that a satisfactory definition of "sufficient information" could be developed. The CTC might be able to act as a conciliator or informal mediator as has happened in several disputes concerning railways. Appropriate regulations might be drafted by activating Section 16 of the Act. Conversely, complaints of conference behaviour might open the door to prolonged investigation and legal action. Section 4 of the Shipping Conferences Exemption Act permits CTC investigations of practices considered to be contrary to the public interest, as defined in the National Transportation Act. Section 12 permits the Director of Investigation and Research appointed under the Combines Investigation Act to initiate an inquiry into conference practices "preventing or lessening competition in the transportation of any goods or restraining or injuring trade or commerce in relation to any goods." It is also possible that approaches made by Ministers or government officials to the disputing parties might help to clarify matters, and might lead to a settlement between shippers and conferences. In summary, existing Canadian law features some interesting possibilities for shippers to protect their rights. However, these laws and their remedies remain untried in the area of ocean transportation.

A third option to protect shippers interests is through active government regulation, as exemplified by the Federal Maritime Commission and the Department of Justice in the United States. Among other things, this active government intervention in shipping has resulted in frequent and major investigations, massive bills for legal expenses and substantial fines

levied against shipowners and shippers for malpractices (particularly rebating). There has also been conflict with other governments on the question of extraterritorial application of national law. In this regard, we note an American survey which "concluded that three-quarters of manufacturers favour deregulation, on the basis of their experience in the past year. They reported average savings of $2.4 million on transportation costs of about $32.5 million per year.[11] That, incidentally, works out to a 7.4% reduction in transport costs, and explains why significant numbers of American shippers support less regulation in ocean shipping. The U.S. Congress and the Administration have, of course, current proposals to dramatically restructure the system. Should some of these proposals come to fruition, the U.S. government may be considerably less active in the regulation of shipping. The alternative of strict government regulation has never appealed to Canadian shippers, nor indeed to the Minister or officials responsible for trade.

A fourth option would be to adopt the Code of Practice for Conferences, an approach formulated by the CENSA, the Council of European and Japanese National Shipowners' Associations. This Code was drafted in the early 1970's as a means to forestall the UNCTAD Code. Important elements of the CENSA Code are: consultation with shippers, and a mechanism for conciliation and arbitration. I feel certain that the Canadian Shippers' Council might well support elements of the CENSA Code. For example, Article 4 states that "Conferences are to publish annually full reports on their activities, which will be generally designed to provide material of interest to their customers." The same Article advocates that conference members should "submit to independent accountants...full information on the costs which they have incurred." Furthermore, "where shippers accept it as a basis for discussion...an analysis on an aggregated basis from this information on costs and revenues is to be made available to representatives of shippers." Canadian shippers would also likely be pleased with Article 5 regarding surcharges. The CENSA Code states that "evidence of cost increases or reduction in value of income should be provided if the level of a surcharge should be challenged by a shipper organization." The CENSA Code could prove quite attractive to both shippers and shipowners since it keeps matters on a commercial level. Many details would, of course, have to be worked out between the parties. In the preamble to the Code, it is recognized that "the Code is necessarily expressed in general terms, although it is recognized that to make it fully effective, liner conferences have to develop specific and appropriate agreements with the shipper organizations." In summary, the CENSA Code might have potential as a means of improving shipper-carrier relations.

A fifth alternative is to consider UNCTAD's published suggestions for shipper organizations. Over several years, UNCTAD has conducted various investigations into shipper-carrier interaction. UNCTAD officials have concluded that "shippers can easily induce conferences to negotiate, as distinct from consult, if shippers have the ability to use alternative services" and that "the organizations which have the greatest success in developing alternative shipping methods are the commodity groups."[12] The chief of UNCTAD's shipping section is quoted as being "sceptical about the value of shippers' councils as a counter to the shipowning sector", since the councils "are by nature of their composition, fragmented, usually under budgeted, and representative of too many small interests." He goes on to

voice the opinion that commodity groups "are the only effective adversaries, being able to negotiate from a position of strength."[13] This approach has the weakness that it ignores the shipper who is not a member of a commodity organization.

A sixth option is to have an active shippers' council backed by national legislation, and adequate funding, if need be government funding. Perhaps the best example of an effective shipper organization is the Australian Shippers' Council. The Council is designated by legislation to negotiate with all shipowners, (not just conferences), in Australia's outward trades. Shipowners are required by legislation and at the request of the Council "to make available for the purposes of the negotiations any information that is reasonably necessary."[14] Information provided to the Council includes charter, leasing and equipment costs; bunker prices; stevedoring and other operating costs; commodity statistics and revenues.[15] Information is provided to an independent accountant, aggregated and sent to the Council prior to negotiating surcharges and general freight rate increases. The Council negotiates maximum rates, and individual commodity groups can conduct further negotiations to reduce individual rates. As a reflection of its success, the Council has a substantial number of volunteers and financial support from the industry. It represents a growing percentage of Australian exporters - at present about two-thirds. The Council is universally regarded as effective. As a concluding comment, the Australian example has seized the imagination of the Canadian Shippers' Council which, at the present time, is actively considering some of these features and their relevance to Canada.

As a last alternative, may I outline a possibility which is really a combination of several thoughts. Over the past few months I have noted the first careful steps being taken by a conference for the purpose of improving its relations with shippers.

The Western Canada-Europe Conference has recently "passed a resolution authorizing and encouraging the conference, and members themselves, to initiate dialogues with shippers and trade groups on freight rates and other matters."[16] The Conference Secretary, Don Thiess, has stated that "a more communicative approach should contribute to strengthened working relationships between shippers and the Conference, and will help assure that the interests of both are better served."[17] Most conferences tend to be somewhat conservative in their approach to change, therefore, these innovations have made the pages of Fairplay, Container News, American Shipper and a number of newspapers.

During discussions in March with Don and two of his less enlightened fellow Conference Chairmen, we wondered out loud why the CENSA Code had been left on the shelf. All three chairmen agreed to raise the question for consideration by their membership.

Having learned of the success of the Australian Shippers' Council, my Department commissioned a comprehensive report on its organization, funding and methods. This has been completed and delivered to industry and government officials concerned with conference legislation.

I am most impressed with the organization's effectiveness and therefore, wish to present as the second element of my favoured alternative

the proposal that Canadian shippers give most careful consideration to the appropriateness of adopting some of the practice, organization, and jurisprudence of the Australian Shippers' Council. This small but effective organization retains a separate identity from government and obviates the need for FMC type regulation.

My conclusion is that if we give priority to getting our own house in order, and succeed in doing so along the lines of the principles enunciated earlier, then we will have developed an equitable system which will be compatible with the sentiments expressed so eloquently in the better elements of the Code. There appears to be sufficient flexibility in the Code to allow the judicious shipper the option of avoiding protracted dispute settlement provisions.

I believe that relations between Canadian shippers and carriers serving our trades can be dramatically improved. Shipper action is required now to ensure that this indeed happens.

With experience gained on the domestic scene from a revitalized and enlightened shipper-conference relationship, Canada shall be better equipped to assess the strengths and weaknesses of the implementation of the U.N. Code of Conduct for Liner Conferences.

FOOTNOTES

[1] C.H. Hibbeln, "A Distribution Manager's Concern about Marine Transport Rates in the 1980's", presented at the Seminar "Energy vs Distribution Costs", Toronto, March 30-31, 1982.

[2] R. Taylor, CMA, quoted by M. Ramsay "Secretive Conferences Fuel Bunker Surcharge Spot", Canadian Transportation and Distribution Management, March 1982, pages 20 - 24.

[3] T. Hale, President, California Grape and Tree Fruit League, quoted by S. Cauthen, Container News, June 1980, pages 26 - 27.

[4] "Bafs Under Fire", Seatrade, February 1981, page 7.

[5] Prof. E.G. Frankel, Impact of Cargo Sharing on U.S. Liner Trade with Countries in the Far East and South East Asia, 1982.

[6] G. O'Brien, American Importers Association, "Regulation Policy-Shipper Perspective", paper delivered at International Transportation Conference 5, Oakland, California, U.S.A., April 29-30, 1981.

[7] R.W. Wigen, 3M Company, "U.S. Maritime Regulation Review: One Shipper's Viewpoint", paper delivered at International Transportation Conference 5, Oakland, California, U.S.A., April 29-30, 1981.

[8] J. Scally, Manager, Export Traffic, General Electric, quoted by T. Neale, "Shippers' Voice", American Shipper, August 1981, pages 16-17.

[9] P.J. Finnerty, Sealand Industries Inc., "Dimensions of Trans-Pacific Trade", paper delivered at International Transportation Conference 5, Oakland, California, U.S.A., April 29-30, 1981.

[10] No 954/79 of May 15, 1979.

[11] "Deregulation Beneficial, Survey of Shippers Concludes", Container News, December, 1981, page 42.

[12] UNCTAD, Formation and Strengthening of Shippers' Commodity Groups, TD/B/c.4/188, November 1979, page 3.

[13] "UNCTAD - Ivory Tower in the Front Line of the North-South Fight", Fairplay, December 3, 1981, page 15.

[14] Article 122-2(c), Trade Practices Act, Part X, 1974.

[15] A. Witts - An Appraisal of the Australian Shippers' Council as a Possible Model for Canada, Main Report, April 1982, page 20. (A report prepared for the Department of Industry, Trade and Commerce).

[16] WCEC Newsletter, Vol. 1, No. 1, March 1982.

[17] Ibid.

Session IV: INTERNATIONAL CONSIDERATIONS

Implications for Foreign Relations

Mr. S. Heeney*
Director
Science, Environment and Transportation
Policy Division
External Affairs Canada

It was not so long ago that the parameters of Canadian foreign policy would have had little relationship to that most international and self-regulating of industries, ocean shipping. The liner fleets of the traditional maritime powers linked continents and markets operating in a framework of self-regulating conferences that attempted to balance the solvency of shipowners and the needs of shippers. Now, a number of circumstances are combining to bring shipping into an environment which will be progressively and inescapably more and more regulated by governments than in the past. The Code is but one effort to introduce this new environment which is spearheaded by the developing nations.

Why are the developing countries now focussing on international shipping? The answer requires a certain amount of background. The political emancipation of the colonial empires since World War II has not, unfortunately, been crowned with uniform economic success and, at times, it appears that many of the new nations of the world have actually been losing ground in the struggle for economic progress. In fact, and contrary to prevailing perceptions, many states such as Brazil, the Republic of Korea, India, Singapore have demonstrated both economic growth and rapid industrialization. Political self-awareness has, nevertheless, combined with the institutions of the United Nations to give the new nations, whether economically successful or less so a voice which argues that the existing internationl economic system is stacked against them and that a new, more equitable order is, therefore, imperative. It is suggested that the rich nations of the world - often lumped together under the label of the north - cannot hope to enjoy stability and prosperity simultaneously with the further impoverishment of much of the populations of Asia, Africa and Latin America, i.e., the South. This debate - on the structure of a new international economic order has been at times reasoned and cool, and at times resembles the non-negotiable demands favoured by students in the 1960s. The debate is but one aspect, albeit an important one, of what has become known as the north-south dialogue, a dialogue which embraces the totality of the north's relations with the south. It has taken place in a number of fora, notably the United Nations and its specialized agencies such as UNCTAD. Few of the economic links between the developed north and the less-developed south have escaped critical examination and shipping, perhaps

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* Mr. Heeney was unfortunately not able to attend the seminar and his paper was delivered by Mr. Michael Dawson.

because of its visibility and past domination by the fleets of a small number of countries, has come in for its share of criticism. As we know, the world shipping industry continues to be the object of close scrutiny in the United Nations Conference on Trade and Development (UNCTAD) from which a number of proposals have emanated which, taken together, could significantly change the future course of the industry.

The first of these - the Code of Conduct for Liner Conferences - is the subject of this conference but it should not be completely isolated from parallel developments such as the UNCTAD initiatives on bulk traffic, open registries and even in the somewhat mysterious world of marine insurance. Because the Code is a product of the north-south dialogue, and may be limited in its effects to that context since OECD Nations will probably not apply it to intra-OECD trade, it would perhaps be most useful to turn now to an overview of Canadian policy towards north-south relations.

The phrase "north-south relations" has come to be used to describe the web of political and economic issues linking the rich industrialized nations of the north and the generally poorer and less industrialized south. It is not a phenomenon we can insulate ourselves from. The interdependence of the world's economies has steadily grown. Nor is it a passing phase that will disappear. The name may change and the focus of debate may move but as long as millions live in conditions so far removed from a decent standard of living, the developing world will continue to make these issues a priority. Developing countries are moving economically towards centre stage, offering new opportunities for more varied economic relationships. The World Bank estimates that in the 1980's, developing countries will account for more than a quarter of the increase in world production and a third of the increase in international trade. This production and trade is increasingly diversified in nature, reflecting the wide variety of national economies in the developing world. It cannot be forgotten that the south includes not only the desperately poor and those states dependent entirely on one or two commodities but also the newly industrializing nations such as Brazil, India and the Republic of Korea - each of whose economies in turn represents a composite of rapid economic and technological growth, commodity production and stark rural poverty. In general, it is the newly industrializing states and the most prosperous commodity producing countries who are most involved in building up their merchant marines and, often, their shipbuilding industries.

As the economies of the south develop and diversify, it has become apparent that they need access to markets, transfers of technology and capital infusions as much as traditional forms of development assistance. A pertinent example in the Canadian context is the Canadian relationship with Brazil - where CIDA's programme now concentrates on transfer of technology and a possible manpower training programme. Two-way trade has surpassed $1 billion in both 1980 and 1981. Brazil's products are increasingly of a processed or manufactured nature including aircraft, automotive products and processed foods.

Returning to the broader scene, two important corollaries flow from this emphasis on trade in north-south relations, one general and one more specific. In general, access to the markets of the north is essential to allow developing countries to trade and thereby earn enough not only to buy

our products but also, for example, to service their international debts, thus reinforcing international economic interdependence. And more specifically, the shipping of goods assumes an importance almost equal to the actual trading transactions themselves, hence the importance placed on international shipping at UNCTAD by the developing nations.

What are Canada's specific interests in the north-south dialogue? Canada has for many years had close relations with a large number of developing countries through the Commonwealth and La Francophonie; our links with the Caribbean have a long history and our Pacific Coast gives us a direct window on Asia. Indeed, our own economy which is both resource based and industrial, and increasingly reliant on high technology is uniquely placed to allow us to comprehend the concerns of both the developing world and our industrialized partners. The Parliamentary Task Force on north-south relations, in its report of December 1980, recognized that these links, both old and new, give Canada considerable potential for a leadership role in the north-south dialogue. Parliament and successive prime ministers of Canada have thus concluded that north and south are interdependent and that policies based on this fact are not only humanitarian but in the long run will serve our mutual economic benefit.

To this end, the Canadian Government seeks the greater integration of the south into the international economic system, recognizes the need to utilize a variety of policy instruments to respond to the needs of developing countries and attempts to harmonize external and domestic policies which have an impact on developing countries.

It might appear that an inevitable contradiction looms between these fine sentiments and the hard commercial realities of Canada's international trade. Such a conclusion would be decidedly premature. A glance at the ranking of Canada's most important customers for our exports shows - after the dominant United States is removed - that developing countries such as Brazil, China, Venezuela, South Korea, Mexico, Cuba, Algeria and India are lodged among our top 20 markets. Moreover, our trade with these countries is growing at a faster rate than our trade with our traditional partners.

Canada's commercial interests in these countries and others are easily defined - further exports of goods and services. But to stop there would be shortsighted. The construction of an enduring trading relationship which will transcend the fortunes of individual contracts requires a longer term approach: joint ventures, investment, commercial links of every kind, including sea transport. Above all, the construction of an enduring economic relationship requires that the advantages be two-way - we must buy to sell and seek balance in our overall position with each developing country. Only this way will the web of contacts grow and mutual interests develop across the economic spectrum. This is especially true of the newly industrializing nations in the developing world, whose economic interests become increasingly diverse as their economies evolve. All these processes require the willingness in the Canadian business community to redefine their interests in a broader context and to see fresh opportunities in new fields. In terms of the north-south dialogue, none of this is contradictory - indeed, it is the very essence of the wider perspectives beyond development aid alone that Canada's Parliamentarians and Prime Minister urge us to adopt.

How, then, should we approach the Code of Conduct to serve best these varied but complementary Canadian interests in the developing world? There is no sacred text of Canadian foreign policy that can guide industry in responding to the still hazy environment that faces world shipping in the years ahead.

Nevertheless, the foregoing remarks suggest the following considerations as factors that might weigh on any Canadian policy. Canadian policy must take into account our lack of a significant, Canadian-flag deep sea fleet. Without a fleet to defend, it follows that our approach to the Code may well differ from those OECD countries who are traditional merchant marine powers. For example, Canadian ministers will need to consider whether Canada's trading interests in the developing world are served by lining up with the traditional fleet-owning countries in defence of their fleets.

It should be noted that opinion in many developing countries holds that the Code is essentially an instrument that will protect the shipping interests of certain countries in the north, while conceding a degree of national participation for developing countries. How do Canada's trading interests fit into this? A number of other questions suggest themselves.

Should we seek to balance one element in our economic relationship with a particular country - such as a merchandise trade surplus - with a deficit on the services sector? Or, should we treat shipping policy much as we do our air transport relations and weigh our sea transport interests on their own?

Is the air transport model of bilateral treaties preferable to a multilateral regime such as the Code? Is the trend to bilateral shipping agreements with developing countries irreversible or can some kind of multilateral or regional regime be found that will accommodate both the OECD countries' policies of economic liberalism with the developing nations' quest for economic participation.

If liner shipping must be regulated is a government-to-government bilateral approach preferable? Among its hypothetical advantages are its flexibility to take into account the specific nature of each trade. Bilateralism can be detailed in nature to accommodate questions of bulk traffics, port use, methods for setting and regulating rates and conciliating disputes or setting up the structure of what would be, in effect, state-supported, closed liner conferences, or bilateralism could take the form of more general umbrella agreements along the lines of the so-called friendship, commerce and navigation treaties which were more common in the first two decades of this century. Bilateralism also has the advantage of familiarity - after all, the Canadian government has negotiated bilateral agreements on almost everything under the sun, from the simple to the extraordinarily complex. Included in this body of treaties are several score bilateral air transport agreements, many with developing countries.

Against these possible advantages must be set the very real dangers of overtonnaging and uneconomic sailing, leading to higher freight rates.

Will the Code preserve shippers' freedom of choice through guaranteeing at least some access to cross-traders which may be less easily done in a world dominated by bilateral treaties? Will the Code provide an opening for a Canadian flag fleet? Do we want a fleet built around an essentially artificial prop, such as the 40-40-20 rule?

Finally, returning to the Code itself, should we do anything? Developing nations' fleets already have free access to our market, thereby supporting one important goal of Canadian foreign policy in the north-south context. In some cases, the 40-40-20 rule would be decidedly retrogressive! The Code will not apply to any trade until both trading partners have ratified it. Should we try to continue our shipping policies, encouraging the free market and deal with disputes as they arise, individually and flexibly, while regulating rates and conference practices through existing institutions? Could a usable set of retaliatory sanctions embodied in some kind of defensive legislation combined with a measured degree of diplomatic intervention as the case requires serve to preserve our policy of enlightened laissez faire?

These comments and questions by no means exhaust the number of issues raised by the Code and by other UNCTAD shipping initiatives. They are put forward only to illustrate that the Canadian situation - a major trading nation without a fleet - is unusual and that consequently, Canadian shipping policies must reflect our genuine national interests in both the north-south context and our foreign trade.

PANEL DISCUSSION 2

Chairman

Professor R.A. Ffrench
Head, Department of Economics
Acadia University

THE CHAIRMAN: Mr. Hariton, I would like to take this opportunity to thank both the CTC and Transport Canada in inviting me to this conference.

From the outset let me state that, from my viewpoint, I think one of the highlights of this conference is the informational component that seems to be emerging, rather than the usual confrontational aspects which tend to be accelerated at certain conferences between groups.

I will not try to emulate some of my preceding panel chairmen, except, I would just like to make one or two comments and that is, I have to take a statement from a preceding speaker, Mr. Donovan Day, when he made a comment yesterday, that with the Code lawyers will certainly benefit in terms of work. I will just carry it a little bit further, as it were, a modified version of the moral of the statement, and I would say economists are not too far behind. As you all know, whatever the stage of the business cycle, the economist is needed, and perhaps even more so in recession. The worse things get, the more you need us to tell you what to do.

Now, getting back to the more serious aspect, namely, the discussion on whether Canada should adopt the Code or not, it is rather interesting. A number of aspects came out with the various speakers this morning, and I am going to offer my conclusion, and it is not a conclusion, but rather a statement. The question we are faced with and I think it is the most relevant question, is whether we should adopt or not adopt the Code. Not adopting the Code, in essence, is maintaining the status quo, or neutrality. But I think it is fully cognizant that if we do maintain that posture we cannot ignore the dynamics of what is taking place worldwide. Whether the Code is outmoded or not, the fact is, change is occurring which is irreversible. One can, however, affect the direction in which these changes may be going, but certainly not the movement. Having said that, I will now try to identify a few points and then we will have questions.

The background, or the underpinnings, for the Code identifies without being spelled out, certain features which I will briefly indicate. Most of us have some awareness and knowledge of industrial organization which gives us the famous trilogy of structure, behaviour and performance. No industry operates in a vacuum, but rather within certain given economic and legal environment. And this economic and legal environment is defined within the terms of our combines or antitrust or monopoly legislation. That's one level. Or it may be defined in terms of the institutional legislation that is passed. UNCTAD, the Code, and all modifications and reservations that we have been hearing of recently may be classified in the latter category. But, this in turn does affect the structure and the operation of shipping. This leads us to what I think is perhaps the most relevant aspect.

Mr. Tetley, and it also was suggested by Mr. Cantin's paper, that we have in place in Canada a good legal and administrative framework, and necessary changes can be made as desired. The question is, what is our reaction time? How long are we going to wait? In Mr. Cantin's paper there is the concept of the maintenance of free competition. Another question? How do we define competition, and what do we mean by free? The underlying tenet of the Code, and that's the thrust of it, is to have specified number of lines. The conference is set up, and you are going to have the national lines or those which are participating, which ultimately will give you a specified number, which certainly does not equate free competition.

Another feature, which was identified this morning, and from yesterday I think one of the things that is pretty clear for most of us who have taken some interest in it, is that shippers without question play a secondary role to that of shipping lines. Most of the thrust of the Code has been directed towards that of the shipping line and industrial structure, which ultimately will determine the behaviour and overall performance, which, in the final analysis, is what we want to secure, and that performance is going to be circumscribed by the institutional and legal arrangements.

So, I am not giving any concrete solutions, but I think it is relevant that we do bear this in mind that changes are occurring. Let's look at some of the changes finally.

First of all, there is greater intervention by government. I think that's a fact, and that's a constant in the equation. We should not delude ourselves that, although the OECD may be taking out a reservation clause,

or the EEC more specifically, may have a reservation clause, that they have been totally free from interference. The EEC major maritime countries, the governments have always and have consistently participated or intervened, either in a direct or indirect manner. So one could say that what we really have is an extrapolation here of the traditional maritime powers, the numbers being increased. So it's really an extension to a wider group, it could be argued.

The second aspect that we should be fully cognizant of is the technological changes that have occurred. We have heard from various individuals yesterday the real crucial impact that's arising as a result of technological changes. This, in turn, is leading to the structural changes, which we have heard.

My final comment before throwing the floor open to ask for questions is as follows. Irrespective of what has been the cause and effect, in terms of the relationship that's emerging, we will have a different operating framework, faced by both shipping lines and shippers, in the forthcoming period in this decade and in the very near future.

The question then one has to ask ourselves is how we in Canada can best adapt to conditions which we know are not static. We are not certain the absolute direction that things are going to go, but I think, without doubt, we cannot, in my opinion, not appraise, evaluate and put in place certain measures that may be utilized if the direction is not in our benefits. Rather then, I think it's better to have some preventive medicine than at the late stage to have major surgery.

I think that's the few comments I have to make, except that I would just like to pose a question to Professor Tetley. He may take the fifth amendment on this, or may not. I hope it's not an unfair question. In your comments, Professor Tetley, this morning, you mentioned the fact of a world transportation system. This was also mentioned yesterday afternoon by Dr. Camu. The question I would like to ask is, how will countries intervene in that system? I think the aspect of the Code stresses the facts of our emerging national fleets. How would these national fleets, and how would the goals of the new shipping nations be satisfied in a world transport system? Because, the impression I got from Dr. Camu yesterday, and, once again, I may be misinterpreting him, if I am, I apologize, is that this world transportation system is certainly not being derived from new fleets, but rather from established shipping lines which are being consolidated. And the question is, where do the new fleets fit into this?

MR. TETLEY: Well, the answer to the question is that we won't have any say whatsoever. Now, maybe that's being facetious but I don't think C.Y. Tung, he's now dead, but his son, is going to consult anybody. He owns shipping lines all around the world. He will compete. He owns various terminals throughout the world. He has made an arrangement with CP now, and they moved to Montreal here, and they have a whole trucking and rail complex for Canada. I suppose he has the same sort of thing all around the world. He will negotiate with Canada on an ad hoc basis, and whatever our law is. He will be completely adaptable. He will probably become a national Canadian carrier for Canada, and he is one for Britain now, and so on. My whole point was that the UNCTAD Code is only presumably controlling cartels on a horizontal level, and it's a little too late, if it's intention was to control vertical cartels.

THE CHAIRMAN: Thank you. We will take questions from the floor mikes.

MR. SCHUTHE: George Schuthe representing Montreal Shipping in Ottawa.

A lot of questions have been put out this morning and I have attempted to focus on what I think are the urgent ones.

As a Canadian who was intimately involved from the beginning with the Code, I suggest that certain decisions will become imperative for us in the context of our international, economic and political relations. To remain a dissident, once the Code is in place, could simply deny us an effective voice in determining how our ocean trade will be served.

First, on balance, does our interest lie in acceding to the Code and exercising influence on its application in concert with our major trading partners in Europe and Japan?

Second, given our relationship with the United States in port ranges and through services, should we be prepared to link our position on the Code to that of the United States? If Canada accedes, the question of criteria for designating a Canadian shipping line, in the context of article 1 of the Code, becomes significant, at least in those trades where a Canadian carrier now exists, or is projected.

On reflection, the difficulties of defining privilege become apparent. Yet, can we afford not to have clear and generally accepted criteria when the issue confronts us? I haven't that to direct to anyone, and there is discussion this afternoon, but I think those are, to my mind, the questions that will require very clear

decisions, and very soon, if the Code comes into effect in the near future.

THE CHAIRMAN: Thank you. Mr. Pageot?

MR. PAGEOT: Well, it's not really a question, but very pertinent remarks, I would say. There is a risk in a Canadian context that we develop a dichotomy in our approach to shipping problems. On one hand we hear people saying, let's rely on traditional market forces, let's rely on the established shipping order. On the other hand, there's a temptation to say, well, let's diversify the Canadian approach, and develop maybe a more unique solution, and I'm thinking here in terms of the conference regime. We have to be a little bit careful about what is the Code of Conferences not to get out of step with the rest of the world, when our total policy is one of reliance on foreign fleets and one of reliance on the established order.

So, if I understand correctly some of the points raised by Mr. Schuthe, we have to be a little bit careful we don't ignore some of the pressing issues raised by the Code, and if we continue a policy of reliance on international shipping markets, that we don't get too far apart from the rest of the world, because our situation, although there's been some analogy with Australia, our situation is not exactly the same. We live on a continent, and we have very strong American firms setting up new businesses, buying those giant container vessels. There will be a review of the U.S. legislative regime, and if we would be getting into, in Canada, in what I call a dichotomic type of approach to shipping, you may run the risk that the conditions placed in Canada would be so different. We're so out of step with the rest of the world that you may accelerate whatever diversion might take place to some of the American ports. In the last few years, and partly due to fairly sound multi-modal approach, we have been able in Canada to register very significant successes in bringing containers, and so on. But when you get into a new generation of vessels, very large container vessels, capital intensive, when you get into consolidation exercises, the risk you run by being too different, is the decision that may be required in the next few years may not be Halifax versus Montreal, or Canadian port versus another Canadian port. The kind of decision we may be confronted with would be eastern Canadian ports versus eastern American ports and the same on the west coast.

So, I think the Code itself may not require an absolute decision in its entirety, but the climate and the spirit and the context of international shipping that the Code establishes will require very careful assessment, and I

guess that's why we have the seminar, to get the ball rolling and get everyone's view. Thank you.

THE CHAIRMAN: Mr. Tetley?

MR. TETLEY: I think you've asked the proper questions, but when you ask is it in our interest to accede to the Code, as the rest of the world is going to do, or is not going to do, I think it should be remembered that no one is going to accede to the Code. The countries that have acceded already have done it with enormous reservations. Peru went in and went out, really. It's unapt to accede on a 50/50 basis. Other countries have said clearly that they accede to the Code but they reserve the right to have bilateral agreements. Russia and the whole east bloc has gone in on the understanding it doesn't apply to the east bloc. It only applies when they're outside of their east bloc. No one is going in without enormous reservations.

Secondly, I think major changes have taken place since the Code was adopted in 1974. One that has been emphasized over and over again by various speakers is the multi-modal question. The second question is the great big ships, the enormous ships, with quick turnarounds, which will only go to one port. Fifteen years ago Moore McCormick stopped at six ports in South America, then six ports in the United States and came to Montreal and turned around and went back. Now, they will go from one port in South America, to either New York or Norfolk, and we hope Montreal. Montreal has replaced Norfolk as the container port this year. A great proportion, apparently, of Montreal's container traffic comes through from New York state. It's really American. This enormous change, because of a new standard, the big ship, the quick turnaround in a single port, Halifax has been left by Dart Manchester Lines just recently, shows what is happening. On the west coast, it would seem that a great deal of traffic is going through American ports and is bypassing Vancouver. This is a much more important factor than all the articles of the Code, this single port. Perhaps only two ports left on the east coast of North America, one in the Gulf and maybe only one or two, one in Mexico and one in the United States on the west coast. That, to me, is much more important and I think we are going to have to base our policy on those considerations, much more than on the Code and the terms of the Code.

THE CHAIRMAN: Mr. Lochhead?

MR. LOCHHEAD: The pressure will start at the Committee on Shipping next month, and we already know some of the script is going to put pressure on those countries who are in attendance, and Canada will be one of them, to accede to the Code.

So that will be --- it won't be round one, but it's round one sitting where we are sitting at the present time.

From my perspective, the reality, of course, is that Canada relies on the continued effectiveness of her position in world trade. We have to. We have a very viable exporting industry. Whatever position we take has got to be structured around that reality. We do not have a shipping interest at the present time. I'm not precluding that perhaps we should have over time. I think, again, that it should be clearly seen to be an adjunct to our interest in trade, in international trade. And, in that regard, it's primacy has got to be seen from that focus. We have a trade interest to protect today. The Code, in its cargo sharing provisions, doesn't excite us as the best way of protecting that trade interest. Having said that, I think that you are then drawn into the realities of our trade relations with all these various countries, and what is the best mechanism of protecting our trading interest. We do have a number of trade agreements in effect today. They are, when it comes to matters of transportation, of the most general nature. They are: umbrella legislation, the removal of discriminatory clauses, reciprocal treatment in one another's port. This is the nature of that agreement. I think, in terms of the Code today, what is going to be happening, with these realities before us, we have to give priority to monitoring the Code effects; if need be, engage in bilateral discussion and continue our process of bilateral trade agreements, with accommodation of the transportation interest within that context and monitor very closely the trade effects of the Code coming into effect, and only then could we possibly make that final decision as to whether to adopt any portion of the UNCTAD Code. Thank you.

MR. POWELL: My name is Jim Powell, Crown Zellerbach Canada.

I'd like to make a comment on Mr. Dawson's remarks, if I may, and he must fell free to respond.

I thought, first of all, that you covered the issues involved quite well. There were, however, two threads in your speech that caused me concern. First, the issue of the north-south dialogue. I think everyone would agree that we, as Canadians, cannot live in a vacuum, that some kind of orderly international economic development is clearly in Canada's interest. However, the subject of this conference is something that is very much motivated by self interest and some national desires, and I guess I get the feeling that our foreign policy may subjugate Canadian interest to that overall spectre of north-south dialogue, and I guess I like a little more assurance that

Canada's self interest will also get a hearing in this equation.

The second point, you made a reference to the fact that we don't have a national flag fleet to defend, and I, again, got the feeling that perhaps that may have some significant impact on our foreign policy. Again, I would like to point out that the fact that we don't have a Canadian fleet, international fleet, is not an accident but a very conscious policy decision, which many people think is the best one still. I would appreciate you commenting on my impression of your remarks.

MR. DAWSON: Thank you.

The first point about the Canadian national interest in the north-south dialogue. I suppose one of the best ways of looking at it would be to ask people from the south how they think Canada defends its national interest. Very often the impression is, is that we play the game pretty roughly, that we play it with perhaps more of an open approach to the concerns of the developing countries than a lot of the other countries of the north do.

But, when it comes to negotiating bilateral agreements with countries in the south, and I think perhaps some of our textile agreements that we have are a good place to start, they strike a reasonable balance between defending what remains of our textile industry and the need for these countries to penetrate our markets. Some people in the south, the country I am most familiar with because I served there, was India, they felt we were altogether too successful in defending our national interests in that particular area.

I don't think that we should be perhaps too much distressed by the rhetoric of phrases like the 'new international economic order'. I used the phrase and it's one of the demons of the north-south dialogue, if I can borrow Captain MacAngus' words of yesterday. Our view of that particular phrase which tends to make people think that not only are the south going to take away our fleets, but they are going to take away our motor boats and our cottages as well, is that it's more a rallying cry, a statement of aspirations. And, since that phrase first got currency in 1974, a lot of developments that the south has had in that program of aspirations has started to evolve into actual practice, common fund, various negotiations, leading perhaps towards a global summit on the international economic order. The prosperity of many of the nations in the south has grown consistently. That's one point perhaps I didn't emphasize enough, that people in the north tend to look at the starving masses of India, and forget that India

launches its own satellites. If you took the richest fifty million people in India, approximately the population of France, they would be far richer than the population of France. It's just a cheap phrase. It's not meant to have any great value. But we shouldn't overlook the fact that this consistent growth in the south has come about without seriously endangering the Canadian national interest. In fact, it's probably helped us by developing our trade a little bit. We are concerned, and we are constantly reminded, in the foreign policies here, by our sister departments of government, by industry, that we can't run off on our own and make up some sort of policy that will have no credibility with Canadian society at large.

On your second point, about the Canadian flag fleet. I'm well aware, of course, that the policy that was adopted after the Second World War was consciously adopted, and has served us very well. One of my concluding points was perhaps, the policy is not entirely without some value still. Perhaps there are ways, if you set up, give ourselves a club, so to speak, of sanctions that we can impose on people who impose unacceptable practices on our shipping lines or shippers. We can threaten them in various little ways. We haven't tried this yet. Perhaps the policy is not valid. That's something that only time will tell, and perhaps some experience, which might be painful.

MR. BLAIKIE: My name is Gary Blaikie. I am the Executive-Director of the Halifax-Dartmouth Port Commission.

I would like to agree with Professor Tetley that technology may be a much more important factor than Canada's accession to the Code. But I would disagree with him on the form of that technology, and the affect it may have on Canada's shipping policy, in that perhaps he doesn't consider the risk that a private shipowner faces, particularly with the mass of investment that Mr. Romoff mentioned, in connection with Malcolm McLean's U.S. Lines' new service. A shipowner, operating such a round-the-world service, will definitely depend upon the New York market, and the hinterland which New York draws. However, to call one port in any range, places extreme risk upon that operator, and he's got to have other options. In Canada's context, I would like to remind everybody that those ships could not operate to Montreal. So I would hope that the policymakers might well consider in any development of a Canadian outlook, that there will be a necessity for Canada's trade to move through an east coast port and probably a west coast port.

MR. TETLEY: I think the point you've made is correct. It may be that Halifax will replace Montreal. I've heard that argument

before, that the ships are so big they couldn't come to Montreal, although the president of a steamship company was explaining to me that his latest purchase, vessel that he's purchased, could come to Montreal, and it's almost a 3 000 box ship. It's interesting that you mentioned Halifax, however. It has much more trade presently than Nova Scotia or the Maritimes provides it. What is happening in Halifax is that there are now feeder services from three American ports, that come to Halifax, and then the containers are trans-shipped and go to Antwerp or London, or wherever. It is also interesting under the Code that the shipment from Halifax to London, or to Antwerp, under the Code, would be decided as Canadian goods, because it would be from a Canadian port and the Americans would have no say into what national lines were used for that part of the carriage. They would have a say from Portland, Maine, Boston and so on to Halifax, if America adopted the Code, which is very unlikely. However, in the carriage from New York state by truck to Montreal, if America and Canada both adopted the Code, that would be goods from the United States, and America would decide what ships the cargo from New York state, by truck to Montreal, would be carried in, or would really control the conferences to Antwerp, which is very interesting under the Code. And that was put into the Code because so much German traffic travels from Germany to Antwerp to, we'll say, New York, and Germany will control, or German conferences and German ships will control that German cargo. Perhaps Halifax will replace Montreal, or Norfolk, or so on, but I think we are going to have a real problem. Another major problem is that we're facing a recession, or are in a depression, and I think this is the factor that's going to affect us a very very great deal as well.

THE CHAIRMAN: André.

MR. PAGEOT: Well, I guess the Code has a section on designation of national carriers. Maybe we should start adding sections on designation of Canadian ports.

That raises a very significant question. We have relied on the present policies to leave the decision-making to the commercial sector. The issue, self-regulation, has been a very valid model in the Canadian context. The majority of you in this room are private entrepreneurs, leaders, as shippers, or as shipowners, and so on. I guess you should deserve a full vote of confidence in continuing to make decisions about which ships you want to use and which ports you want to use. I think, as a civil servant, that very often classifications and levels may be linked in number of people, of batteries of economists or lawyers under ourselves. It would certainly not be an aspiration of mine, as a policymaker

to get ahead in my career that way. All I would like to say, in the general spirit of our policy formulation and review of the Code, we would like to avoid as much as possible to get into decisions like that, as to where you should go, who you should use, and which type of vessels you should use. We would like to leave to you those decisions.

But, what we want to discuss is a framework and an environment where, as a government, we will make the decision-making easier for you. So, it is not a very specific answer but it sets, at least, a general approach and philosophy at least in which we are discussing these issues.

THE CHAIRMAN: Thank you.

MR. MONTGOMERY: My name is Don Montgomery. I am Secretary-Treasurer of the Canadian Labour Congress.

I want to make one opening comment about the speakers. They were interesting, and sometimes informative, and I certainly wasn't bored, but I found that after analyzing what they've all said, and trying to find the bottom line, they haven't been much help to me finding a pair of black socks in a dark closet. I hope that somewhere along the line there'll be some more evidence as to where we're going.

It seems to me that the rules are being changed, and it's not very clear how they're being changed.

My first question is, in this new game that is going to be played, with the rules somewhat vague, will the quick and devious again be the winners, when all the talk is gone and the smoke has cleared, and the new rules have taken place, and the victims have been announced?

The other question I have relates to some suggestions here that we have more bilateral talks and more bilateral agreements. Now, it appears that the Code is another version of government intervention, and we have had some track record for Canadians negotiating bilateral agreements. It seems to me that we have generally come up with a bronze medal. When there are only two players in the game, that isn't a very good result. Do you feel that in this new game that I'm calling 40/40/20, that Canada will again come up with, not win or place, but the show position? And can Canada afford not to get into the game?

MR. LOCHHEAD: I would simply respond that I only look for my black socks in the dark closet when I am going to an affair, and dressing up with my tux, and I have no plans to go to

such an affair, in terms of international legislation, at the present time. I prefer to find out what the affair was all about. And that's what this seminar is all about, to try to find out the various concerns that the shipowners, shippers, have around this country. Thank you.

MR. TETLEY: I find your question was a little bit of black socks in a black closet as well.

I gather, however, that you are suggesting, and it's a suggestion made by many people and an interesting and valid one, do we develop a deepsea fleet. And so that we can be partners in this question, and that is a real question, we have to ask ourselves, and we have to ask the Canadian Labour Congress as well, what their view is and what contribution they expect the government, industry, shippers, carriers, and the whole economy should make, and is it viable? And it may very well be viable. I was talking to Mr. Misener by chance, and he is building, or putting on line, or purchasing three new ships, which will be Canadian flag, which will be inland three-quarters of the year, and one-third of the year he is going out in deep sea. And here's a new step, and he thinks it is now viable. So, perhaps that's the answer.

THE CHAIRMAN: Further to the question of the last questionner, there is an aspect in your question which I am a little bit concerned about, and that is the perhaps failure to identify that we're really talking three groups, shipping lines, shippers and the consumers. It's normally presumed in our society that the shipping lines can take care of themselves, given some framework, institutional legal framework that's put in place. The shippers, given their structural features, will, whether it be shipping councils or what have you, negotiate with the shipping lines. The consumer is normally left out of the game. Well, John Q. Public was once defined best by a Chicago economist, as, that when you're worrying about the public, you're really not talking about gross national product, you identify him as g.n.h., gross national hamburger, and perhaps that's how John Q. Public should be viewed.

But, I think it is inescapable that, if you're going to be changing the rules of the game, that you do concede that the role of the national government does come in. I don't think you can change the rules of the game, or have the rules of the game changed, and that's what is happening, and leave it solely to the shipping lines, or the shippers, to make the final decisions. I think that, because the shipping lines and the shippers do operate within a given legal environment, I think this is inescapable. I think the government has to move, or

policy has to be initiated, which incorporates the desires and wishes that changes do occur, and it is to that, I think, which this conference is dedicated, and, I think, while substantial answers and definitive answers may not be coming out of it, I think the recognition of the problems, and where we have to go, is just as important. Thank you.

MR. DAVIES: John Davies, from Acadia University, another practitioner of the dismal science.

I have a question, more policy-oriented, to Mr. Dawson.

You mentioned that the Code of Conduct should not be looked at in isolation, on the basis of its own intrinsic merits or defects, but against the backcloth of the noises UNCTAD has been making about the bulk trades, open registry, and the general aspirations, new international economic order, or whatever you want to call it. In that connection, do you think it's possible that the Code could stand as a sort of blueprint for the transfer of technology elsewhere, other forms of politicized transfers of power, industry, north to south?

MR. DAWSON: Possibly, but other international organizations have a somewhat better record for transferring technology, power and influence. I think, in the maritime field, we would first want to look at IMCO, which is not politicized in the same sense that UNCTAD is. But, most people who've been involved with it consider it to have been fairly successful in its primary areas of maritime safety, pollution control training. IMCO will be spending a lot of effort in the future on training mariners from developing countries. They'd like more money than they get, but that's another problem.

ICAO, in international civil aviation, has a fairly good track record of transferring very complicated technology, and political influence, in international civil aviation, to developing countries.

So, the Code may well be a prototype of some sort, but there are other models that are, perhaps, not so high profile, but more successful.

MR. HASSE: Gerhard Hasse from ACL, a member of the conference, across the North Atlantic.

I would like to ask Mr. Lochhead a question, if I may.

It seems from some of the remarks that we heard yesterday morning from Mr. MacAngus, and from the tone of some of your remarks, as if we in the conferences, and I include all conference members now, were sitting in sort of dark

rooms with sort of fairly nefarious schemes, trying to rip off the Canadian Shippers' Council members, and the Canadian public.

I would like to know from Mr. Lochhead whether, number one, he realizes that, even with the revised new service that is coming into Montreal, and maybe consolidated service, that the return on investment of that service, to my knowledge, today, is not sufficient to invest in new containerships? All that we have had, even with the tremendous increase in tonnage through Montreal, were enlarged ships, lengthened ships, but no new tonnage, simply because Canadian rates are not by themselves sufficient to warrant the investment of new tonnage coming to Montreal, or even to Halifax. It would have to be done on a peripheral basis. Do you have any sort of ideas, do you have any sort of guidelines, do you have anything in the back of your mind, that would denote to us what you consider to be a fair and equitable rate structure, or are you saying that as long as rates are sufficient to carry traffic on a peripheral, on an incremental basis, it should be done that way? Or, can we expect, or can conferences expect, to ask shippers to pay a fair return so that new, ultimately, new investment can and will be made to warrant a purely Canadian sort of freight service?

MR. LOCHHEAD: I don't recall making any statements about dark rooms, and I wouldn't like to comment on the enlightenment of conferences, but that really was my theme. If I came out critical of conferences, it was only with respect to my subject, which was shipper-conference relations. It is in that area that they're deficient.

I recognize that the conferences are trying very hard to operate an efficient shipping service around the world. They're also trying, like any other sensible corporation, to make a profit for their shareholders. I recognize that. I don't say anything other than, in the process of the dialogue with the shipper groups, that an enlightened approach should be taken, such as has been. We have one example, where this dialogue is improving, and the whole point that I wanted to raise there was simply that this disclosure that there was sufficient evidence on the table, during the bunker surcharge process, that suggested that, indeed, there was undue use of this mechanism to bump up the rates. Now, various conferences might come back, or various shipping lines might say that was because we were already below market, and we were already having trouble breaking even. That's fine too, if you could have shown to the shipper group that that indeed was the situation. Then I think most shippers, being also in business, recognize the realities and the need for profit, would have said, "Fine, that's the rate

and we accept that." The dilemma has been that the conferences have been, because, essentially, of the intrinsic nature of a conference, and the workings within the conference of the independent lines, and the reluctance to disclose their independent information. That is the dilemma. They were unable to come forward with that proof that, in fact, the bunker surcharge was not unreasonable, and that, coupled with freight rate, they were only indeed breaking even and making a modicum of profit.

So, I think it is in that area. That was the thrust of my discussion.

Moving on to, do I have ideas for what represents a fair rate structure? I always, in business, have ideas on how to set the rate for our product, which will guarantee that we stay in business. Recognizing all the various factors which come into consideration, you have to do it. That way is just simply the same way that everyone else does it. If the Montreal trade is in difficulty, that's something that you should sit down with your customers and discuss this, and discuss the realities of your difficulty, and see whether or not they can accommodate the reality of your situation.

MR. HASSE: I merely made the remarks because I gained the impression from you that, you know, there was a fair bias, and I think you even mentioned the conferences had sort of an opportunity to impose either rate structures, or to impose certain charges without sort of, you know, the prerequisite negotiation, etc. I would say that if you want to look at the average rate that is charged on the North Atlantic today, that it, number one, that it's probably not near the level that it was a year, year and a half ago. In many instances, some adjustments had to be made. Furthermore, I think it is important to note that, on comparable commodities, or identical commodities, you will find that the rates on the North Atlantic, ex-Canada and to-Canada, are not only fractionnally, but sometimes considerably, less than comparable commodities warrant in the U.S., across the North Atlantic and back.

MR. LOCHHEAD: I was aware of that fact. Thank you.

THE CHAIRMAN: That's the last question that we will take today.

I'm afraid that one of the good points about any session is that if there are a number of questions still remaining, once a famous actor said, "Leave them wanting more.", all the speakers this morning will be quite willing and prepared to answer any questions in the interim, or at luncheon that we are going to take at the present moment.

Once again, Mr. Chairman, on behalf of the speakers this morning, and myself, I would like to thank you for the opportunity for us to participate in the conference.

Session V: OPTIONS AND ALTERNATIVES

Overview

Mr. G.M. Sinclair
Administrator
CMTA, Transport Canada

Mr. Chairman, there are only three things worse than being the fifteenth speaker on the same subject in a single program, and those three things are being the sixteenth, seventeenth or eighteenth speaker. However, I hope we can manage to hold your attention for the afternoon. I was asking Dr. Hariton how he figured the attendance would be, and I must admit it's better than I thought it would be.

On Tuesday morning I attended another conference of our own group in Transport Canada, wherein we were attempting to finalize our planning for '83-'84, and set the stage for where we might be going in '84-'85. One of the things that I was emphasizing to our executive group was the fact that in a period of recession and restraint I would be holding them even more accountable than I had in the past for their actions, and that I would be expecting a zero defects justification for any action that they proposed, or any project proposal they put forth. In applying that kind of discipline to the executives in Transport Canada, I have to be prepared to apply it to myself. So, if somebody asks me to justify why I'm here today, I might put a statement to them that they wouldn't be very satisfied with. I am attending a conference to consider a proposal that's about ten years old, is ambiguous, has more questions than it has answers after all that time, is stated to have little effect on Canada, which many say is obsolete, and no one intends to follow it anyway. That leads one to wonder, really, what are we doing with this issue? Or, what have we done with this issue? You've heard a good many of the questions that must be considered, if not answered, by some of our officials in attempting to present options in a reasonably intelligible form, so that ministers, who have really no acquaintance with the subject, can come to some kind of an intelligent conclusion. And, it's entirely possible, that the decisions might be taken for reasons that aren't related to transportation, if, we have more questions than we have answers, if we consider it ambiguous, if we say it has little effect on Canada, if it's obsolete, and nobody in transportation intends to abide by it anyway. Perhaps we might deserve that result.

Just as a little diversion, I was treated earlier to a definition of Ottawa, and I take a particular delight in collecting jokes about public servants and whatnot, because any one of my four daughters liberally give me the shaft every once in a while. And, the latest definition of Ottawa is a ninety square kilometre desert, surrounded by reality. Some of you might appreciate that. It was given to me by an outsider from government, with a good deal of delight.

We've heard from previous speakers about the intent of the Code, about the way other countries are interpreting it, and the potential impact it might have on Canadian trade. We've also heard about recent trends in liner shipping, and interventionist policies of other governments. We've looked at the Code from a regulatory perspective, from the viewpoint of shippers and carriers, and with respect to external relations for this country. With this background, it's appropriate to begin asking ourselves, what should Canada do with respect to the Code?

Following me are three speakers, who represent the key interest groups, which might be affected by whatever position Canada takes on the Code. Each of them has been asked to give their view on the costs and the benefits associated with Canada acceding to the Code, or adopting an alternative approach to the subject matter addressed here.

Before we hear from each of these speakers, I'm going to attempt to outline for you the broad range of options which are open to this country, and which have been brought to the attention of government officials for their consideration.

As I describe some of these, you may feel that some of them are definitely non-starters. Some of them are old chestnuts. Others you may be hearing for the first time, and some of them may be worthy of some further consideration. I present these options in no order or priority, and more closely moving from one side of the spectrum to the other.

The first possible option on the one side of the spectrum is to adopt the Code, with all its provisions, without reservation, for application to conference operations to or from Canada, and without any substantive changes in Canadian law or policy. That's one option.

A second option would be to accede to the Code with some modifications. These could be modifications of either adding to or deleting from the provisions of the Code. Canada could reserve against certain provisions of the Code. We might, for example, reserve against the rate freeze provision, or we may enter a reservation which would subscribe to the EEC formula, so that the cargo sharing provisions of Article 2 would not be applied in conference operations between Canada and members of the EEC, or members of the OECD, who subscribe to the same reservation. These additions or adjustments to the Code might take the form of supplementary legislation, which could specify information exchange between shippers and conference members, beyond the requirements set out in the Code.

A third basic option is to cannibalize the Code, and adopt only those provisions considered advantageous to Canada into Canadian legislation or policies. This absorption approach could be done at the level of the principles contained in the Code. For example, we might adopt the principle that intra-conference and shipper-conference relations should be basically left a commercial matter, but that they should have some fundamental guidelines to govern their functioning. We might adopt the principle that there is a role for involvement of government officials, known in the Code as the appropriate authority, but only as observers, and not as decision makers. We might also adopt the principle that the designated Canadian line has the right to participate in the conference, according to the conditions specified

in the Code. Such an absorption approach may also take the form of the adoption of specific provisions of the Code. The provisions which can be considered in this regard are the membership provisions, information provisions, rate freeze provisions, those regarding the basis for consultation, and those even regarding cargo shares within a pool. Some provisions are probably not suitable for Canada, as these require an international administrative mechanism structured under the Code; the ones dealing with a conciliation tribunal.

A fourth option, which is available to us, is the outright rejection of the Code and its principles, and the development of a Canadian policy with respect to conferences. There is a broad range of possibilities under this option, some of which have been widely discussed in the past. Some of these would involve more government intervention. You'd all be happy with that! With respect to rate and service, this can take the form of regulation. It could, on the other hand, take the form of greater government involvement in rate negotiation, without direct regulation. This could, for example, mean specific requirements regarding information to be exchanged between conferences and shippers, government officials participating in rate negotiations, or even the creation of a governmental research body, which would gather information relative to shipper-conference negotiations, and provide this to both parties.

With respect to the role of the national line, Canada could, theoretically, adopt interventionist policies, like those of some other countries, which would promote its participation in conference trade by the use of unilateral reservations of cargo, special preference to a national line, selective bilateral cargo sharing agreements, trade control. However, such an approach has been strongly opposed, not only by Canadian shippers, but also by Canadian carriers.

With respect to both shipper and carrier interests, Canada might institute defensive legislation, containing retaliatory measures, which would be implemented if the action of foreign governments materially and detrimentally affected our interests.

At the other extreme, under a strictly Canadian approach to conferences, Canada could eliminate any obligations on the part of the conferences, even those currently in the Shipping Conferences Exemption Act, and still provide them exemption from anti-combines legislation. The Shipping Conferences Exemption Act is a Canadian approach, which lies between very strong government involvement, and no government involvement. This Act, as you know is currently under review.

There's one last basic option, which is not just frivolously suggested, and that is to eliminate protection for conferences altogether, thereby making them subject to anti-combines legislation, and possibly obviating any need for a code or any other policy to deal with conferences.

As I stated at the outset of this survey, some of the options warrant a good deal more consideration than some of the others, and I am sure that you'll agree that perhaps some of them warrant no consideration at all. There may be other options which I have not mentioned. If there are, I'd be glad to hear from you concerning any others.

Canada has not yet decided whether it will become a contracting party to this Convention. This country abstained when the Convention was adopted in the U.N. because of a general fear that shippers' interests were not adequately protected, and because of certain ambiguities in the Code, which made the application of certain of its provisions uncertain, and that ambiguity continues even to this day. Particular concern has also been repeatedly voiced about the cargo sharing provisions, and whether this might seriously reduce competition, and thereby decrease quality of service, and at the same time increase rates. In a sense, Canada has continued to abstain or remain firmly on the fence, as far as the Code is concerned. While publicizing our concerns when asked about our position, our Canadian officials have continued to study some of the possible impacts of the Convention on this country. In determining which option Canada should take on the Code, there are a great many questions which need to be answered. Is there any particular benefit in having an international standard for intra-conference and shipper-conference relations? Is it desirable to have such a standard entrenched in a Convention? If the Code were established worldwide, would there be, for example, merit for Canadian interests, knowing that in trades in which they participate, an international conciliation procedure would be available? Even if it were desirable to have the Code adopted worldwide, would the Canadian adoption of it make one whit of difference? Are these benefits from the Code for Canadian interests, if it were applied in whole, or in part, in Canadian trade? Are such benefits only achievable through adoption of the Code, or are they achievable by other means? Are there drawbacks to adopting the Code in Canadian trade? Are these drawbacks equal to, less than, or greater than any benefits that may be achievable? If, in the event the Code is judged to be beneficial to Canadian interests, would the Code satisfy all the current and foreseen requirements of those interests? In taking a position on the Code, are we to satisfy everyone, and offend no one? Is that possible, or is that a definition of a consensus? Is consensus possible?

In answering these questions, one is led beyond the immediate scope of the Code itself, to consideration of this Convention in the context of overall shipping objectives. In particular, one needs to look at whether the Code's adoption should, or even could, assist in the development of a Canadian flag presence, without detrimentally affecting shipper and other interests.

One must try to imagine the future shape of the world shipping, once the Code comes into force, recognizing that it might be widely applied, but according to very different interpretations. In some countries it might even be applied to all liner shipping, non-conference as well as conference. Some countries may attempt to apply their interpretation of the Code, even in their trades with countries that are not contracting parties. One must also weigh whether whatever net benefit there is to the Code, is better than the alternatives, which would apply in Canadian trade in the absence of the Code being enforced.

While the Code has many sections that do not relate to the control of provision of shipping service, this is the aspect of the Code which should receive particular attention, since many countries interpret Article 2 as providing them with the right to forty percent of their liner conference trade as an absolute minimum, if not fifty percent. One must consider to

what extent the Code will directly, or indirectly, reduce free and fair competition for shipping service, if, in fact, free and fair competition exists today. This is a fundamental point over which many European shipping officials argued before the E.E.C. formula was adopted. Some have claimed that the Code was the thin edge of the wedge of government intervention in shipping, and that to accede to the Code was to set a precedent that would undermine the traditional basis of free and fair competition in shipping, and, to accept the Code is to fuel moves towards the reservation of all shipping, including bulk shipping. These officials see a pattern to measures in UNCTAD, which leads to an end to free and fair competition. They note, for example, proposals to end open registries as yet another move in that direction. They predict that, if unchecked, shipping will go in the direction of air transport. Others have argued that, as a form of intervention in shipping arrangements, the Code is relatively harmless, and that it might deter other countries from forms of intervention which are even less acceptable.

These people pointed to the initiatives such as those taken in UNCTAD, by developing nations, to try to achieve a worldwide recognition of their right to carry a minimum of fifty percent in the bulk trades, and to even unilateral reservation policies directed to up to a hundred percent control of shipping.

I am reminded of the day I spent with the Argentine Minister of Maritime Affairs. When I asked him what his position on the Code was, he said he was unalterably opposed to the Code, which interested me. He said, "I don't want any part of it. My basic position is fifty percent, on a bilateral basis, and that part of your fifty percent that you can't supply is mine." He was very clear. I had no trouble understanding him. Very clear. There are a lot of other countries that make it just that clear.

While determining whether the Code is the thin edge of the wedge, or a deterrent, one must decide whether the interventionist policies of some other governments will truly affect Canadian interests. It has been suggested that such policies have not been adopted by Canada's main trading partners, and that those developing nations which have adopted such policies do not always apply them so as to hurt Canadian interests. If, in fact, that's true at the present time, will it remain true in the future? Certainly, the fundamental aspirations of the developing nations to change the world order in shipping are clearly evident, and they should be taken very seriously. Their very clear aim is to increase their share of the shipping service on the basis that they have the right.

So, even if one concludes that Canada's interests are not hurt by foreign intervention today, really, we must look beyond the immediate to the longer term. In so doing, we're going to be called upon to make a judgement regarding the trend towards government intervention in shipping, and whether that trend is likely to continue. We must also consider whether, if it does continue, it will have an increasing detrimental effect on Canadian interests, and whether even the Code could protect Canadian interests, if they were threatened.

Having weighted the need for, and the potential merits of the Code as a deterrent to intervention in shipping, by foreign governments, we must

also consider what alternatives are available, and the costs and the benefits of those alternatives. We'll have to consider, for example, whether Canada might adopt the legislation, which would empower us to institute the retaliatory measures that might be necessary, if someone was to harm our interests.

Another major consideration are the possible moves of the United States with respect to the Code and the impact that their policies might have on us. The United States are going to be faced with an interesting dilemma. They are faced with an interesting dilemma. Being in favour philosophically and perhaps even pragmatically for free and fair open competition, they have an equal or opposing force that says they must build their merchant marine for national defence purposes. Now, I can't help but think that the present Falklands crisis is very likely to have some significant influence on the way that country might go.

I can't adequately present all the questions that need to be answered, or all the factors that need to be weighted. But, I've tried to outline some of the questions. The fact that we have more questions than answers, at this point in time, is really reflective of the fact that we're at the consultative stage. If we had answers, this wouldn't be consultation.

We're dealing with virtually a decade old document, which is by description, inadequate, ambiguous, obsolete, has little impact, and very few people intend to follow it to the letter anyway. Really, what we're doing, is taking a decision based on what we think the future will hold. And, if nobody is at all in doubt as to whether the bulk trades are going to be affected, I would suggest you watch very closely, because I think you'd be disabused of that thought. They very definitely are going to be affected.

I strongly encourage your careful consideration of what Canadian position should be adopted on this particular Convention, looking more towards the future than looking at the past, but using the past perhaps as a guide for the future. I hope that whatever option you support will take into account broad implications of deep-sea transportation in the future, and the fact that we will undoubtedly face increasing intervention by foreign governments in shipping. I can assure you that all the government officials who are involved in this question are anxious to hear from you, as we have during these past two days, and that we commit, all of us, that we will give all the points of view a thorough consideration.

If I've confused you, but I hardly think I have, with all the questions, welcome to the surroundings of whatever reality there is in Ottawa. You now have an appreciation of what the officials have to wrestle with. You have an opportunity to influence the final decision, and that is consultation, my friends, that's consultation.

Thank you.

Implications for Canadian Exporters and Importers

Mr. J. Chidiac
General Traffic Management &
Customs Manager
Massey-Ferguson

Introduction

Had there been a significant measure of understanding between conferences and the world-wide shipping public, the UNCTAD Liner Code may never have been written. Until the middle of the last century, when ships were made of wood and sail, negotiations between carriers and merchants undoubtedly did not need a formal code to govern their relationships. Up until that time, vessel capacities were small and the variety of trade was relatively simple. Therefore, it was likely that both carriers and merchants were sufficiently aware of each other's competitive environments to allow satisfactory agreements without a conference intermediary.

With the advent of steam, steel and the Suez Canal, capacity grew much faster than cargo and the ability of mere mortals to reap the benefits of these technological advances. As a result, cut-throat competition ensued and carriers established the first Conferences, which created a gulf between shippers and carriers. Over the years, the primary concern of Conferences to ameliorate the competitive pressures among carriers may have superseded their concerns of competition among shippers. The dissatisfaction of shippers and governments in Third World countries with Conference indifference to their competitive needs eventually led to distrust and the UNCTAD investigation of Conference activities. As in the Helga Dan investigation, the UNCTAD investigation was a prime factor in establishment of Conference regulations.

Belatedly, Conferences, recognizing the growing criticism, created the CENSA Code. However, the experience of the Canadian Shippers' Council does not demonstrate that the Conferences have lived up to their own code in providing information as provided under Paragraphs 4.3.1 and 4.3.2 of the CENSA Code. It is not surprising, therefore, that there has been some misdirected pressure for a Code of Conduct for Conferences.

Although regulations and codes of conduct are a way of controlling Conference abuse of power, it should be recognized that, over the years, some shippers have made significant efforts to overcome unsatisfactory Conference practices by other means. In their efforts to get around the rates set by conferences, shippers had to accumulate sufficient cargos to economically load their own vessels. In the early stages of development, this was not an easy task. But, as technology advanced, and physical distribution and marketing systems capable of handling full vessel loads developed, more and more cargo was taken away from the general cargo Conference carrier. Gradually, carriers were split into what has become to

be known as the liner and bulk trades. Not too many years ago, the terminology was liner and tramp trades.

With the advent of containerization, the cleavage between bulk and liner trades widened considerably. This very process has been going on during the past ten years, while the UNCTAD Liner Code was developing. Unfortunately, it appears that the process of change was not fully recognized at the time that the Code was formulated.

Even today, we may be witnessing further liner trade evolution with the development of vessels such as con-bulkers, which are essentially an effort to bring the economics of liner and bulk trades together again. However, even Mr. Narby, as the proponent of con-bulkers, emphasizes that the concept will not be suitable for most traffic lanes. In view of advancements in further ship specialization, such as car-carriers, his outlook may well be correct.

Given this set of circumstances, it may be that when the Liner Code is internationally put into effect, it will be almost obsolete and disruptive to international trade. However, since its implementation is the desire of developing countries and may soon come into effect with or without Canada's ratification, it behooves Canadian shippers to consider the options available in the forthcoming world environment under the Code.

At this point, we can only speculate on some of the many possible ramifications of the Code and consider only a few of the most obvious options that may be available. To do otherwise may result in never-ending or never-diminishing debates on possible outcomes with a final rash decision to ratify the Code. Although the immediate reality is that the Code may come into effect this year, Canada can afford to delay ratification in any form, if at all, until the most beneficial options can be determined.

In order to seriously consider available options, the possible impacts of the Code on liner transportation fundamentals should be examined. To the extent that the code distorts the economics involved, Canadian shippers may obtain benefits or incur penalties depending on which approach to the Code is taken by Canada, as outlined in the previous speaker's overview to this session.

Collective Rate-Making

The prime fundamental in liner transportation is collective rate-making. Essentially, conferences are groups of carriers on a given liner trade route who attempt to rationalize their rate and services in order to provide stability for themselves. As a by-product, their efforts in establishing stability may also provide positive economic benefits for many shippers through a levelling of wide rate and service fluctuations over short time periods.

It is obvious that the collective rate-making evolved in response to commercial needs, and provides a mechanism for stability. It is also obvious that liner rate-making problems are as difficult as rate-making problems in other modes of scheduled transport.

However, when the costs of collective rate-making exceed the benefits, the general public's interest suffers. The problem is determining when costs exceed benefits. Even if, with sophisticated measures, the cross-over point could be determined, the expense of data collection and objective analysis may be prohibitive. It is therefore necessary to find other means to ensure costs to society do not exceed benefits provided.

There are two basic methods of controlling collective rate-making abuses. Among shippers, the preferred method is competition, and the less desirable method is regulation. At this point, it is not clear that the Liner Code provides sufficiently for either or a satisfactory balance of both. It is very possible that the Code by its bilateral and other provisions could promote undue regulation and defeat competition.

Competitive Controls under the Liner Code

In domestic or overland traffic, goods can be shipped via highway, rail and inter-coastal networks, as well as through the air. Within each of these modes of transport, there are various groups of carriers, in addition to independent carriers. Even without regulation, there is natural competition among the modes that serves to keep prices within limited margins above costs.

For example, railroads have proportionately high fixed costs and the same pricing complexities as those of ocean liners. Motor carrier costs, on the other hand, are mostly variable because the road systems are provided by government and license fees and fuel taxes make only a contribution toward highway construction and maintenance costs. Therefore, on short haul traffic, railroad prices are limited to rate levels attainable by for-hire or private highway competition. Even small shippers are often in a position to operate their own highway vehicles.

Other avenues open to shippers are consolidation and distribution programs set up to operate through their own or public warehouses; joint-loading shippers' associations; company barges, rail cars and terminals; pipelines, and so on. The competitive alternatives and combinations available are only limited by the extent of imagination applied.

When it comes to the liner trades, however, the alternatives are limited to: non-Conference carriers; full or part charters of vessels; and, airfreight. For the vast majority of shippers in liner trades, non-Conference carriers present the only realistic alternative. However, through the use of loyalty contracts, Conferences often nullify the competitive effects of non-Conference carriers.

While the Liner Code recognizes the collective rate-making controls on competition within conferences, it does not provide for the most effective external competitive controls available through the use of non-conference carriers. Instead, it sanctions the continued use of loyalty contracts with their attendant rebates, discounts or non-contract add-ons.

Aside from the point that it is quite likely that there can be no cost justification for these rebates, discounts or add-ons, paragraph 153 of the 1970 UNCTAD study on the Liner Conference system clearly stated that

"non-conference competition on a regular and reliable basis cannot exist" in trades where loyalty contracts have been instituted by the Conferences. It is obvious, therefore, that during its evolution, the Liner Code eventually contradicted this UNCTAD study and did not intend to establish non-conference competitive controls on collective rate-making abuses by Conference carriers.

Regulatory Controls under the Liner Code

Considering the Liner Code as a whole, it can be seen that it is a simply worded guideline giving Conferences every flexibility to deviate from the Code provisions, as long as member carriers mutually agree. Under the Code, Conferences are directed to adopt a list of malpractices and machinery to deal with them. There is no requirement, however, that the malpractice list and machinery be included in the Conference agreement. As there is no review by any government authority, a Conference may take a very lax attitude toward self-policing.

For example, although Article 18 admonishes Conferences not to use fighting ships to destroy non-conference competition, they are free to do so if there is mutual agreement. If Canada were to ratify the Code, Section 6 of the Shipping Conferences Exemption Act, 1979, would still be needed to prevent this abuse of power. Therefore, it is obvious that ratification of the Code would have the undesirable result of increasing rather than diminishing the need for regulation.

At the present time, Canada provides a relatively healthy and minimal regulatory environment for non-Conference carriers, as well as for Conference carriers. Canadian shippers also generally seem pleased with the current situation. Should Canada ratify the Code, it appears certain that conditions will change adversely.

Even if Canada does not ratify the Code, some repercussions will eventually be felt here, to the extent that our trading partners adopt the Code with or without reservations. This is because shipping regulations enacted on one end of the trade establish conditions which impact at the other end of the trade.

An amusing example of this effect was recently provided at a London shipping conference by J. Todd Stewart, an official of the U.S. Department of State. In this example, country 'A' required all ships to be painted red, while country 'B' required all ships to be painted green. As a result, the countries were faced with resolving these differences or discontinuing their commerce.

Less amusing is the extra-territorial reach exercised by some countries. For example, more than one Latin-American country stipulates that all shipments from Canada be routed by its flag line. If Canada had a flag line the trade between the two countries would, presumably, be divided between each country's carriers. However, since Canada does not have protective legislation against such abuses, its shippers have no choice in the matter.

Some less obvious implications of the Code were revealed in a 1979 essay by Dr. S. Sturmey, formerly Deputy Director of the Shipping Division at UNCTAD.* Although he was no longer speaking for the body which drew up the controversial 40:40:20 cargo-sharing concept, his views on how it would apply in practice should carry some weight. According to Dr. Sturmey, the operation of cargo-sharing was intended to extend to non-conference lines. This would make it impossible for a Conference to act as the administrator for cargo-sharing; and, as Dr. Sturmey concluded, national authorities would have to regulate cargo-sharing for all carriers in their trades.

In effect, this would be unilateral regulation of shipping by a country that would profess to be doing nothing more than the Liner Code envisions. Recently, we have witnessed actions by President Marcos of the Philippines precisely along the lines predicted in 1979 by Dr. Sturmey. Although the Confederation of Philippine Exporters is opposing the government cargo-sharing scheme, the final outcome has not been determined.

It, therefore, seems abundantly clear that the Code is not an ideal model upon which to base national regulatory controls over collective rate-making abuses. In addition, the probability is high that the Code would eventually impose an almost paralyzing set of rules that would be costly to administer, capable of abuses and likely to foster considerable controversy over interpretation and enforcement.

National Flag Regulation

From what has been said, it is obvious that the Code was not really intended to promote trade. In fact, from all indications given by world-wide supporters of the Code, the primary intent appears to be the promotion of national flag interests without a corresponding concern for the balance of national interests. It remains to be seen, however, if the Code would really promote national flag interest and at what cost to the balance of national interests.

As Adam Smith pointed out in Book IV on Systems of Political Economy, there seem to be two cases where it would be only generally advantageous to lay some burden on foreign commerce. The first case concerned promotion of national flag ships for purposes of defence, and the second case concerned an equalization of domestic taxes.

In Adam Smith's day, a merchant's ship could be converted into a warship with relative ease, compared to doing the same kind of thing today. With the impact of higher fuel prices and the development of more efficient cargo vessels, the differences between merchant ships and warships will become even greater in the near future. Therefore, the justification of national flag registration for purposes of national defence appears to have substantially diminished since Adam Smith's day. To satisfy today's defence

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* 40:40:20 - Cargo Sharing in the Code of Conduct, by Dr. S. Sturmey, published by Lambert Brothers Shipping, London, England.

logistics requirements, there are, no doubt, far superior alternatives to the Liner Code that have not been explored.

Shipper's Options

From comments noted in the press, the general consensus of shippers throughout the world is that international shipping is now dangerously drifting into the imposition of complex unilateral, bi-lateral and multi-lateral regulatory restrictions. While it is true that international trade was never completely free of such restrictions, the worst practices up to this time were primarily in air transport and some minor ocean liner trades. However, Canada's ocean trade with countries having flag protection laws is small and Canada's total world-wide air transport volume does not compare with its total world-wide ocean transport volume.

To get a view of what the future international shipping scene might look like if all countries ratified the Liner Code, one only has to review the IATA situation. The development of IATA appears to have been the natural result of a carrier field crowded with subsidized national airlines. As a result, diplomatic channels are often resorted to in settlement of disputes without considering the underlying economics.

In geographic areas where the Code would prevail, national flag ocean carriers dominating the liner trades may eventually have to work out some agreement amongst themselves, similar to the IATA agreement. Although the agreements would become un-stuck from time to time as they do in air transport, diplomatic channels would be resorted to for resolving differences. Under such conditions, shippers would have few, if any, options to influence the outcome of these negotiations.

In so far as the Code is concerned, it appears to be fortunate that Canada does not have a national flag carrier at the present time that could immediately suffer while other countries ratify and implement the Code. However, as more and more countries ratify and implement the Code, the present environment of shippers will be changing. Some aspects of this change may be favourable, while other aspects may be adverse and depend on whether the "shipper" is an exporter or an importer.

For instance, if Canada's trading partners, who have adopted the Code and instituted substantial national flag fleets, utilize the ramifications of the Code to veil the subsidy of their exports at the expense of their imports, Canadian importers may profit to the extent that Canadian exporters lose. Carried to an extreme, this practice could dry up the trade between Canada and such trading partners.

Trade would dry up because eventually vessels carrying trade to Canada would have little or no cargo for return voyages. As the process would continue, freight on cargo into Canada would have to rise to cover empty return voyages, thereby making such country's exports to Canada less competitive. To the extent that Canada would retaliate by countervailing duties, subsidy of exports or putting in a Canadian flag vessel on the trade, the demise of the trade would only be prolonged at the expense of the Canadian general public.

It stands to reason, therefore, that Canada's trade partners who adopt the Code would be obliged to avoid extremes in using ocean freight tariffs to subsidize their exports at the expense of their imports. Under such circumstances, individual Canadian exporters would have some limited options of complaining of exorbitant freight rates to Conference Secretariates and/or to foreign regulatory bodies, directly or through diplomatic channels. As a last resort, Canadian exporters as a group could utilize the "conciliation" provisions of the Liner Code. Canadian importers who felt their freight rates were exorbitant would have the options of complaining to their sources or simply doing their buying elsewhere.

With these prospects in mind, there appears to be no reason for Canadian shippers to welcome the Code. Hopefully, Canada's major trading partners will not be ratifying the Code without reservations, if they ratify it at all. In addition, if Canada does not ratify the Code, its shores may become a haven for carriers who are shut out of trades where the Liner Code prevails. As a result, there should be some additional, and as yet unknown, options for Canadian exporters and importers to utilize competitive non-Conference carriers.

The ability of Canadian shippers to take advantage of these currently unknown developments would be enhanced by adhering to the "IF" principle. That is, by maintaining a sufficient level of Information and Flexibility, shippers would be able to make maximum use of their opportunities as they unfold.

Canada cannot ignore policy developments in the EEC and the U.S.A. which, while they are not directly related to the Code, have been stirred up in discussions of the Code's impacts. The U.S. policy considerations on cargo diversion could have adverse effects on vessels loading at Canadian ports, while U.S. policy considerations in regard to bilateral cargo sharing could have adverse effects on Canadian cargos loaded on vessels at U.S. ports. At the same time, other U.S. and EEC shipping reforms of maritime policies are converging to a point of overlap on jurisdictional issues, as was pointed out in this year's Tulane University seminar on Foreign Transportation. One example cited at the seminar was the definition of what constitutes predatory actions of Conferences in eliminating non-Conference competition in the U.S. versus the EEC. Inevitably, the definition would evolve differently in courts on each side of the Atlantic, leaving carriers subject to conflicting obligations and the survival of the non-Conference carriers in doubt.

In practice, the Shipping Conference Exemption Act and federal shipping intelligence units have provided a basis for continuing progress in shippers' knowledge of Canada's overall trade, and the ability to act in protecting and increasing it. It is my view that Canada should retain what it has and adopt policies which will be in harmony with Canada's major trading partners and ensure that competitive non-Conference carriers will continue to be available on Canada's most important trade routes.

Implications for Canadian Labour

Mr. A. Boyle
Executive Assistant
Seafarers International Union
of Canada

I have been asked to relate the labour perspective on the implications for Canadian labour with respect to the Code of Conduct for Liner Conferences.

Prior to initiating my remarks, I would like to clarify that the term Canadian labour refers to all Canadians and not solely those in the union movement or maritime industry.

The theme of my address is prosperity or prostitution as this is in essence the choice Canadians have in deciding whether or not to participate as equal partners in international trade and commerce.

Essentially, this complex problem boils down to two (2) questions; Will a Canadian deep sea fleet benefit Canadians? And is a deep sea fleet economically feasible?

On the pro side, both Canadian labour and industry agree that a Canadian deep sea fleet would revitalize the Canadian maritime and allied industries, protect the economic, industrial, social defense and sovereign interests of Canada and, most importantly, benefit the Canadian taxpayers with a new prosperity.

On the con side, multinational corporations pander Canadians like pimps with a convenient service of "foreign owned or registered ships", claiming Canadians would not benefit from a Canadian fleet.

The apex of this argument is, as always, the government's position - should it continue to assist foreign nations to develop industrially to the detriment of Canada and all Canadians, or create a channel whereby Canadian interests can meet their potential and have Canada prosper as a sovereign nation.

The Deep Sea Fleet Perspective

The scope of this idea is immense if you consider the present-day situation. Foreign nations rape the benefits of our natural wealth; multinational corporations or state subsidized shipping fleet whose only goal is to further develop our dependency on their vessels for their "services" and/or to increase profits, act as middlemen by extorting huge tax-free profits from captive markets while we as Canadians, having painted ourselves into a corner, wait to purchase back finished goods on a cost plus basis. One must not envision solely ships going abroad and returning to Canada with cargo but rather one must vision the total economic impact that shipping would have on Canada.

For this vision to be recognized as a positive addition to Canada's industrial strength, a Canadian deep sea fleet must be viewed as a secondary industry of primary importance.

As an extension to existing raw resource industries as are mining and agriculture which, because of domestic demand, might not fully warrant development into processed goods for domestic or foreign use, but as commodities for export, only when they are shipped Canadian can Canada and Canadians attain optimum benefit.

An ever-present aspect in arguing against a Canadian deep sea fleet is the potential price increase to the consumer.

What is never mentioned is the benefit to Canadian taxpayers, if for example, 10,000 jobs are created and maintained by creating a deep sea fleet that is a saving of almost $2,000,000.00 a week in unemployment insurance paid out to unemployed Canadians by the Federal Government.

Also, the spin-off employment effect of a deep sea fleet would offer Canada:

(a) Continuing employment in the shipping industry and spin-off benefits in allied industries and retail trades.

(b) Economic benefits arising from the exploitation and development of available Canadian expertise and technology in shipping.

(c) Revenues from government guarantees for vessel construction.

(d) Revenues from taxes paid by working Canadians.

(e) Protection of the economy of Canadian ports and adjacent areas.

(f) A reduction in the usage of American ports in handling Canadian waterborne trade. In turn, this would ensure utilization of the Canadian highway and rail systems in the movement of goods.

(g) It would help reverse the current billion dollar plus deficit in our balance of trade.

Now when the possibility of a marginal price increase is weighed against these positive aspects of a deep sea fleet the result should be obvious that the consumer, as well as all Canadians would benefit by shipping Canadian.

With respect to national security, would ships flying flags of convenience be reliably available to Canada in the event of an economic war, armed conflict or national emergency? Would a ship manned by a crew of foreign nationals be unquestionably under the control of Canada? In the event of a foreign embargo imposed on Canada or a national emergency?

This is not some hawk-like approach to shipping intended to harp the patriotic heartstrings of Canadians but rather a response to those who say we have no difficulty hiring efficient and competitive international shipping. Let me instill this thought: it is not so long ago that we heard somewhat the same comment about oil; there would always be a plentiful supply of petroleum at low cost, so why spend money on alternatives or in drilling at great expense in the frontier areas and offshore.

I would have hoped that Canadians had learned a lesson from this trick and conclude that part of our economic assessment would be to consider the effects of unexpected and unpleasant changes in world conditions.

There is no assurance that change will be in our favour, and from experience, I believe the contrary.

It is necessary for national security to have a Canadian merchant marine,

(1) Capable of supplying Canada with import/export trade during times of international transport disruptions;

(2) Sufficient to carry a substantial portion of water-borne export and import commerce to Canada and to her NATO and Commonwealth allies;

(3) Capable of serving as a naval and military auxiliary in time of national emergency;

(4) Owned and operated under the Canadian flag by citizens of Canada, who would be more responsive to both the security and commercial needs of Canada;

(5) Responsive, responsible and in a position to be held accountable for maintaining environmental and safety regulations which are not enforced on foreign vessels.

Canada has developed a constantly growing dependence on foreign nations for the supply of virtually all of the raw materials essential to the economy and the military preparedness of Canada, whether between Canada's east and west coasts, north and south coasts or from around the world and in world affairs. This childlike dependence is a stumbling block, not a stepping stone, to the full realization of Canada's potential as a respected sovereign nation capable of instituting international policies designed by herself.

Labour Stability

The Seafarers' International Union of Canada has, since the present administration under President Roman Gralewicz, developed a tried and proven formula which is beneficial to both the Canadian seafarer and maritime industry in providing labour stability, based on the following requirements:

(1) That a deep sea labour agreement, as is presently practised by numerous companies, be keyed to the Great Lakes Agreement, in respect to wages and working conditions;

(2) That all grievances be submitted to a joint union-management grievance board;

(3) That any unresolved grievances be submitted to binding arbitration by an independent board.

This Seafarers' International Union of Canada concept is revolutionary in the field of labour relations. The Seafarers' International Union of Canada and other unions are willing and able to take a responsible position in the formation of a proposed deep sea fleet, guaranteeing labour stability under the terms outlined above and the availability of experienced seamen.

The availability of qualified personnel is a further example of the positive role labour can play in the development of the deep sea fleet. In an era where the horizon is bleak for young Canadians embarking on a maritime career, the S.I.U. of Canada, in conjunction with contracted companies, has begun its own marine training institute funded without government assistance in an attempt to establish itself as a responsible factor in this industry's growth.

In conclusion, if this Code is ratified by a sufficient number of member nations, it must increase the influence of national shipping lines both on rate-making and on services provided. If these national shipping lines have goals apart from political influence or such as the promotion of home country exports as well as commercial goals, it may have serious implications for Canadian exports. If the national flag lines are powerful enough and can, within the Conference, push through low rates for their own export cargo, it necessarily means higher rates for their import cargo which is Canadian export cargo.

Canada, by maintaining its worse than third world attitude by not having a national shipping line, would not have a voice and be subject to external decisions affecting its economy. Its share of import or export cargo will be apportioned to the other carriers in proportions designated by the Code.

But a deep sea fleet would give Canada international independence, thus guaranteeing the right of self-determination and would not be an expense but an investment in our future as a sovereign successful importing and exporting nation.

The time is right, the need is there and with the increasing demand for Canada's natural resources abroad, Canada's marine policy must steer a new course for economic independence; for it is not only feasible but profitable for Canada to "Ship Canadian".

Implications for a Canadian Fleet, Its Development and Associated Policies

Mr. L.G. Pathy*
President, Fednav Ltd., & Deputy
Chairman of the Canadian Shipowners
Association

It is my privilege to be the last of a parade of speakers, all of whom have been addressing some aspect of cargo preferences which will impose restraints upon what must be the last bastion of the "laissez-faire" system in the world today. This entrepreneurial process within the international shipping industry has kept increases in the cost of waterborne transportation services to exporters and importers substantially lower than that of other modes of transportation in spite of the dramatic increases in bunker prices and capital costs over the past decade. This is particularly true in the more stable liner trades where containerization has resulted in lower ton-mile costs.

However, the reason we are assembled here is to develop a national response to an impending curtailment of this open and competitive market. What we have heard during some of these sessions confirms our contentions that indeed cargo reservation principles will preclude the operation of liner services at the most economic levels, especially in the trades with the diversity of developing countries which would each be entitled to a small share of the total trade. Competition among the liner carriers will be reduced by a rigid conference system which must produce higher freight rates as will the reduced port options which will increase shipper costs through higher overland or feeder transportation charges.

With these factors in mind, and keeping at the forefront the importance of Canadian competitiveness in export markets, it is my task to consider the implications for the development of a Canadian fleet viewed against the options open to Canada in the face of the coming into force of an international code for cargo sharing.

As Vice-Chairman of the Canadian Shipowners Association which I represent here today, I must commence by reiterating the policy that has been clearly enunciated by this group in its statements and briefs: the CSA would obviously prefer to see Canadian cargo moving on Canadian ships. However, the group would wish to see Canada respond from a position of strength to the challenges of international cargo sharing rules. The foundation for the formation of a Canadian flag fleet with which to meet these challenges cannot be based on cargo protection. Canada could respond from a position of strength to any of the options open to it if there could be introduced a conducive fiscal regime which would reflect a recognition of

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* Mr. Pathy was unfortunately not able to attend the seminar and his paper was read by Mrs. Anne Burnett.

the international nature of the shipping industry. Such a fiscal regime would produce a stability within the industry that cargo preference alone cannot provide - and especially in periods of low economic activity which we are now experiencing.

Just a little less than two years ago, in June of 1980, I responded at the Third National Marine Conference to the question "Can a Canadian-based group be competitive in today's international shipping arena?". Certainly nothing has changed over the intervening two years to change my negative response to that query. The question I am dealing with today is essentially the same one - only with the corollary of cargo protection. "Can a Canadian-based group be competitive in today's international shipping arena provided it is granted a measure of cargo protection?" The answer is still no. We in Canada cannot compete on equal terms today whether under foreign flag or Canadian flag. The few of us who do conduct international chartering operations in Canada pay a price; our profitability is less than it could be were we in a country with a more hospitable tax regime such as the United States or United Kingdom. The question often arises as to when the personal considerations that keep us here will be outweighed by the problems of trying to remain competitive as a Canadian-based company.

However, the policy-makers in Canada now must make a choice! The nations of the third world have decided, rightly or wrongly, that part of their thrust to participate in a new economic order will be through the establishment of national fleets supported by cargo-sharing stipulations which vary from adherence to the suggested 40:40:20 of the liner code to bilateral agreements - even to a unilateral declaration of 100 per cent protection.

Unfortunately, Canadian exporters will be held captive by these customer nations in terms of freight rates if we cannot offer a Canadian shipping participation. Although trade with the developing nations now represents just approximately 14 per cent of liner shipments to and from Canada, we must recognize that the expansion of our export markets is aimed at these very countries. Indeed, Canada is in the forefront of leadership in the north-south dialogue, the goal of which is to enable the developing nations to achieve a greater parity within the world economic community and strengthen mutual demand for trade.

How, then, in order to establish a Canadian shipping presence in this rapidly changing scene, can we encourage the growth of a Canadian-based international shipping industry and eventually a merchant marine? There are several ways:

1. We could encourage a flow of ships into this country by offering accelerated capital cost allowances.

2. Canadian shipping companies resident in this country should be permitted to operate fleets under other than Canadian flag in international trade as do residents of the United States and the United Kingdom and deferral of taxable income should be allowed if these shipping revenues earned offshore continue to be reinvested in shipping. In fact, a substantial

incentive for repatriation of international revenues would be provided by permitting shipping income earned abroad to be used for the acquisition of ships in Canada without tax being paid on the repatriated income.

3. Finally, we should encourage the principle of Canadian companies acting as designated national carriers, whether under Canadian flag or otherwise.

This last suggestion appears to me to be the crux of the solution and where the most viable option exists for Canada's response to the UNCTAD Code and to the even more radical protectionism which is being advocated. The Code does not stipulate exclusively national flag lines but clearly recognizes that a national designated line may charter in tonnage to fulfil its conference obligations.

The positive implications for a Canadian fleet become so much more visible if this concept is accepted. There is undoubtedly a requirement for a Canadian flag deep-sea fleet but we all recognize that under present circumstances, it is unlikely to become a reality in any substantial form. Combine it, however, with the concept of a Canadian-owned, Canada controlled foreign flag fleet and incentives to repatriate some of these in time, this country could build up an effective merchant marine in relatively short order and without a significant cost to the exporter or the taxpayer. Alternatively, the enactment of restrictive legislation and punitive taxation will prohibit Canada from taking the place which she surely must take in this new economic order.

To consider the establishment of a Canadian flag merchant marine solidly on varying degrees of cargo protection is as precarious as building a skycraper on a hill of sand. If a firm foundation can be laid on the rock of sound commercial and fiscal premises, then the building may be begun and gradually augmented with the knowledge that the winds and storms of economic and trade patterns will not cause it to collapse and be washed away.

PANEL DISCUSSION 3

Chairman

Professor T.D. Heaver
Chairman, Division of Transportation
Faculty of Commerce
University of British Columbia

THE CHAIRMAN: Thank you, Mr. Chairman. Ladies and gentlemen.

I feel somewhat apprehensive about being given the role of chairing the last session on a very interesting two days on Canadian perspectives on the UNCTAD Code of Conduct for Liner Conferences.

It is really deliberate that my first statement as Chairman of this discussion period makes no specific reference to the Code. I believe that the discussions and presentations that we have had have really left us with a much more general question, and I have worded it as, "How does Canada, do we, prepare for the uncertainty caused by the unpredictable nature of greater government intervention, greater foreign government intervention in shipping?"

In the report of the late Howard Darling, I believe of about 1974 or 1975, Howard Darling expressed concern for the readiness of Canada, I guess that really meant of the Canadian government, I don't know if it was appropriate that he should mean that, but I think that's what he meant, the readiness of the Canadian government to respond to uncertain and changing circumstances, which might adversely affect Canadian interests. Are we not still wondering about the same sort of matter today? Are we ready to respond? But are we ready to respond to what? And that's where we've got this uncertainty of government intervention. And all of us may be wondering about our readiness to respond. And the breadth of that question is at its greatest for government. That desert in Ottawa contains many seeds, some of which are for weeds. Which of them should we water? Unfortunately, very few of us are farmers. To be of direct assistance to Mr. Sinclair, who I guess, by analogy, I am suggesting is a farmer, and we won't relate Crow rates to that. Most of us at best are gardeners, and some of us don't even have garden boxes, window boxes. In other words, we're engaged in our own specific activities, well removed, fortunately, from the oven of policy development in that Ottawa desert. And, we find it difficult to

relate to Mr. Sinclair's problems. Do we really want to relate to Mr. Sinclair's problems? And that difficulty was acknowledged by John Chidiac in his opening remarks. He expressed clear concerns about the specific problems of importers and exporters. Andrew Boyle and Anne Burnett presented specific perspectives also. You find that, as you look closely at each window box, one can become overwhelmed by the life that's present there. It reminds me of the great satisfaction that I have had from having small children, and relearned the satisfaction of stopping at wayside pools, instead of looking at the ocean, and finding myself overwhelmed by the life in that small pool.

Have we helped bridge the gap between our specific interests and Mr. Sinclair's problems? Can we do so? And, considering the nature and scope of Canada's response to our uncertain future, associated with the Code of Conduct for Liner Conferences, we must keep in mind the frequent references to the expected limited impact of that Code on Canada's trade, but we must also keep in mind the particular dilemma of Mr. Sinclair and his colleagues. The dialogue that we are going through is to protect Canada's interests, and we hope that it is going to be done by appropriate government action. That appropriate government action is to establish a governmental framework, in which the conduct of business can be done in such a way that we have efficient transportation, efficient Canadian industries, serving a wide range of Canadian interests.

I hope that in the last chance that we have for dialogue and communication, we can keep in mind the end purpose of helping Mr. Sinclair and his colleagues to make decisions which will better meet Canadian interests. With that as a general comment, I invite questions.

John Chidiac, in his presentation, indicated that there was a question he would like to have answered, and I feel that somebody that has spent as much time as John had, obviously, in preparing his paper, deserves a first crack, and so may I have you frame your question, John, before throwing it open to the floor?

MR. CHIDIAC: The specific question I had this morning, that I didn't get a change to formulate, I'm still not sure I've got it formulated, was in the question of the extraterritorial reach of, say, the Latin American countries. This was even before the Code. In that situation, what does Canada have now in protective legislation, if anything, to help in that situation? For an example, when the U.S. extended their antitrust laws on the North Atlantic, England passed some laws about prohibiting the U.S. government, or foreign governments, from looking into the

books of their carriers, you know, making them subject to U.S. antitrust laws. That's an extraterritorial reach, and, in a case where a country like Argentina says, "Because you, Canada, do not have a flag, I want a hundred per cent of all the traffic going to and from Canada", that's extraterritorial reach. In many cases, we're going to be faced with that problem in Canada. With this country, like the Philippines, that is doing another unilateral application of the Code, are we just going to see a multiplicity of that, and I can really see that problem coming up more and more in the future, and I guess that's what our real problem is here.

But, starting from the base, at that point, and not using the Code as the only vehicle to balance that out, what do we have now? Does anybody know? In protective legislation? Nothing?

THE CHAIRMAN: Gordon, are you ready to finger your button there?

MR. SINCLAIR: Sure. I saw Joe Carton getting up to speak, and I guess the short answer to John's question is not a bloody thing. We don't have defensive legislation at the present time. There's a group looking at the possibilities of defensive legislation, modelled after the British law, but we don't have defensive legislation, and I guess I would be hard put to respond if somebody asked do we even have the resolve.

MR. LOCHHEAD: Graham Lochhead. Industry, Trade and Commerce.

I do think you have to put on record the fact that you have the normal diplomatic response, as a first option. You then have the option of trade countervailing measures being brought to the notice of the country in question. In some cases, in most cases, you will have a trade treaty, which as I mentioned earlier today, may have reciprocal or non-discriminatory aspects to it. Having said that, I would be the first to admit there are a number of gaps, where defensive legislation is needed.

MR. BOYLE: I would just like to add one thing on to all of this. Since everybody is looking for defense, as opposed to offense, which seems to be the part and parcel of the non-policy for shipping, just off the top of my head I'd suggest maybe they use Canadian flag carriers, which there are some, and there's more coming. Federal Commerce has at least one ship flying a Canadian flag and servicing international countries, as well as IntraCan, Jensen Shipping, Degagné Shipping, Misener's building three brand new ships for foreign trade, Patterson has several ships for foreign trade, CSL is launching the new Atlantic Superior, which is capable of going foreign trade, and so is Algoma Central launching a new ship capable of going foreign.

So rather than look for some defensive or diplomatic answer, maybe they should look to Canadian shipping companies and Canadians.

MR. CARTON: My name is Joe Carton, Transworld Shipping.

I'm rather surprised that everybody should look at poor Gordon Sinclair, the government, and government agencies, UNCTAD, conferences for help. It seems to be entirely contrary to the history and the success of this country.

Basically, shipping is very much so governed, as somebody pointed out today, one of the last fortresses of private enterprises, to the economic laws of supply and demand. If Argentina wants our products badly enough they agree to any form of transportation. And, this has been proven in international transport over and over again, in all countries, in all incidents. And, the Soviet Union wanted American grain. They agreed to a shipping agreement which gave the American flag ample protection. In other words, the position is not that the government has to go out and protect you, that taxation or custom duties are being imposed, restrictive rules. If what you're trying to transport from and to Canada is badly enough needed to be sold, to be purchased, then the shipping arrangements follow automatically.

Therefore, Mr. Chairman, if you'll allow me, not quite having reached the state of a gardener, but having had 44 years of private competitive shipping experience, I like to describe the situation, for which Mr. Sinclair has asked some advice, or opinion rather, as follows.

The two topics occupying this meeting were UNCTAD and the conference system. UNCTAD was conceived as a crutch to aid third world, or developing nations, mostly at the expense of the so-called capitalistic world. The liner conferences we inherited in Canada, mostly due to our commercial goods in the United Kingdom, and they are, to a large extent, put in armour to protect and preserve the establishment.

Do we in Canada today need either of them? Do they serve our best interests? Shipping is a service operation, a support activity to the country's economy as a whole, not an industrial activity, justifiable per se, at least not as long as we do not own or operate a Canadian deepsea fleet.

The functioning of shipping services is governed, like all other commercial activities, by the laws of economic gravity, depending on whether the party demanding such

shipping services is operating in a seller's or buyer's market. If it is the former, the UNCTAD Code, or the conference rules, will help to maintain the highest level of earnings. But if it's the latter, he will require competitive rate and service to conclude his transaction. The number and quality of professionals participating in this conference should create sufficient confidence amongst the purchasers of shipping services in Canada that, without the shackles of UNCTAD and the conferences, they can secure here ocean transportation needed for their business.

THE CHAIRMAN: Thank you.

Would any of the panel members like to respond in any way?

I would just like to make one response, in case I left the impression that either I, as an individual, or this conference as a process, was seeking to establish a more elaborate framework of government intervention than we now have.

The impression that I meant to leave was that I hope our intention is to develop a framework of government presence, appropriate to efficiency in our economy, and the protection of our interest, and that level of framework or involvement might be less than we now have. I did not seek to imply the direction of government involvement or the extent to which it would move, and I think that was also present in the range of options which Mr. Sinclair presented to us.

MR. MONTGOMERY: Don Montgomery, Canadian Labour Congress.

I have a question. Has anyone here considered the possibility of the Code never becoming a reality, but that it may spark a group of governments representing major shipping industries putting into place as a defensive mechanism their own agreement, that will benefit only those that sign the pact, and yet in their strategy be clever enough to meet, in some peculiar way, enough of the developing countries to defuse the present campaign for the present Code?

MR. SINCLAIR: I'm not sure whether I can respond to that.

I could suggest that perhaps what the EEC countries have done, and in expanding their option to invite into their solution all OECD countries, that they might be headed in just that kind of direction that Mr. Montgomery suggests, that they would preserve whatever the status quo is amongst themselves, and would attempt to relate to the rest of the third world in accordance with the third world's apparent wishes, as expressed by the Code.

That's an option they put forth, and I guess one of the few things that the EEC has really managed to agree on.

I would like to, if I could, for the moment make sure that I understand completely Mr. Carton's comment. Am I correct, if I assume that what you're saying Mr. Carton is that you would be quite prepared to see the end of the conference system, that we should not protect the conferences from anti-combine laws?

MR. CARTON: Sir, I am only able to give my own personal answer from experience with the conference, and from having watched the decline of their influence in volume and in usefulness, what I consider usefulness, to relevant business. I do not see any harm being done for Canadians trading abroad if the Combines Exemption Act would not be repeated.

MR. SINCLAIR: I understood your position very clearly on the Code, Mr. Carton. I just wanted to make sure I understood it very clearly with respect to the Shipping Conferences Exemption Act. I think I do.

MR. NIGHTINGALE: Arthur Nightingale, Saguenay Shipping.

With all due respect, I cannot agree with Mr. Carton's statement.

If Brazil requires Canadian goods enough, which they apparently do, to the extent of about a billion dollars a year, they do not, therefore, agree that the goods can be carried on Canadian flag vessels. I would like to quote here from a paper read by Commandante José Carlos Franco de Abreu at the Sea Trade Conference in London recently, on behalf of the superintendent of SUNAMAM which is the governing authority in Brazil. It will be very brief when I find it. "Brazil reserves for itself that which righteously belongs to Brazil. It does not discriminate because it is not discrimination to keep for oneself what righteously belongs to oneself." Okay?

"It is determined that the maritime traffic between Brazil and other countries shall have a predominance of ships from the importing or the exporting country. The objective of the Brazilian policy of maritime international transportation is to have equal participation of shipowners from the exporting and importing countries." Great. "Furthermore, all imported cargoes destined directly or indirectly to the public administration, or those imported privately, with any governmental benefits, must be shipped under Brazilian flag." It is in the figure of, the current figure of trade is, I say, about one billion dollars. In 1980 it was 764 million dollars, of which 93 per cent fell within

the category that I have just described. There is a qualifying statement here which says that "the Brazilian maritime authority may, however, release up to 50 per cent of these cargoes to the exporting countries, as long as there is a reciprocity in this treatment." In other words, they will condescend to let 50 per cent of this movement go, provided the exporting country demands that right. They are not going to gratuitously give away the right. The Brazilian government cannot do that. They cannot justify doing that. They require a demand from the exporting country, whether it is Canada or anybody else, and this is what we're asking for. Thank you.

THE CHAIRMAN: May I ask a question, which really follows up from that, and I guess I'm asking it of you, Gordon?

If Canada is placed in such a position, which government department gets it on its desk first, and who does what with it after that, and how long does it take?

MR. SINCLAIR: Yes and no.

I don't know which government department gets it first. I don't think it matters. How many government departments would get involved? Probably all of them. How long would it take? Forever.

THE CHAIRMAN: Do I ask the follow-up? How does it change?

MR. SINCLAIR: Professor Heaver, that's a part of the question that I don't think I could answer. If I did give a flippant answer to the earlier part of your question, but suffice it to say that when that kind of question has arisen, in the past, officials in government have been unable to come to a clear conclusion, and that's why I gave the somewhat flippant answer.

I'm not sure how it changes, unless there was a clear change in policy, and I wouldn't care to forecast how long that would take, or even what form of change policy would take.

THE CHAIRMAN: There are a couple of people that indicated they wanted to ask a question. I wonder whether either of them is either directly or indirectly related to this discussion?

MR. MOORE: Thank you, Mr. Chairman.

I just wonder in reply to that last question there, does that not underscore the need for some kind of defensive legislation, such as the U.K. has, which would allow, give powers to the Canadian government to take steps whenever there are excesses, in terms of cargo

reservation asked for, and if we were to focus on developing that kind of defensive legislation, would it not sort out the questions in our government as to who would be responsible for taking a Canadian position and carrying it in the negotiations with the foreign governments?

Now, I don't know whether that's a rhetorical question, Mr. Chairman. Could I just comment a little bit on what was said earlier ---

THE CHAIRMAN: Would it be appropriate to see if there is a response to that first?

MR. SINCLAIR: Well, I guess if I could respond, defensive legislation is the solution. There is one alternative solution to a problem of perceived harassment, or discrimination, against Canadian trade, by some other foreign country. Whether defensive legislation is the most appropriate alternative, is still up for debate, and I presume, whether that or any other alternative is selected, would depend on the degree of discrimination, by how many countries, against Canada, was manifested throughout the world. So, defensive legislation possibly, but it's only one of several alternatives, and is your overall Canadian position better enhanced by dealing with that kind of problem through some other alternative, if it's only a single country that you're dealing with? If you have a broad-based problem, then maybe the alternative of defensive legislation is the best way to go. If you feel that you're going to be faced with that kind of problem from a number of your trading partners, then it could be argued that the existence of defensive legislation would clearly be a signal, a pre-emptive signal, that maybe you shouldn't try that kind of discrimination, because there are the tools to deal with it, and there's that point of view that comes to the fore also.

THE CHAIRMAN: Mr. Moore?

MR. MOORE: The second observation I had, had to do with another alternative which is being put forward, and that is the whole question of a Canadian flag, to take up its share. I suppose, from the point of view of shippers, on the surface, that it is fine, and it would be a very attractive solution, if it could be done without providing any kind of subsidization. The combination of any subsidization in Canada, to establish that flag presence, along with the cargo reservation, surely would put the Canadian flag in the forefront of pressures to raise costs within that trade, at the cost of shippers.

My other concern in that respect is that, it seems to me, that the problem raised by the Code, given the exceptions

that are being discussed now, is largely with the certain number of developing countries, which account for a relatively small part of our overall liner trade. What concerns me a little bit is that a Canadian flag, surely, except in special circumstances, such as Mr. Nightingale's company is in, would naturally tend, I would have thought, to look to trades where there is rather more cargo moving, and those aren't the trades, generally speaking, which are going to be the biggest problem, as the Code is implemented. I wonder if anybody would like to comment on that?

THE CHAIRMAN: Mr. Boyle?

MR. BOYLE: Yes, I'd like to comment on that. I'm not going to pre-empt anybody else up here making a comment.

I don't believe, first of all, that anybody here today has mentioned subsidy. I think it's been a standard ongoing position of most Canadian maritime interests to be offered the same competitive advantages in shipping, as are afforded other nations of the world. This might sound real simple to a lot of people here, but it's not that simple. Right now, there's a pie called international trade, of which we are receiving nothing. So, even if you let that trade operate tax-free, and hired Canadians, you wouldn't need your defensive legislation. It would be economically competitive against the majority of nations for sure, especially if you're talking about the trades between Japan and the west coast of Canada, with coal, or whether you were talking Canada to United States, or whether you were talking Canada to Europe, or for that matter, Australia, New Zealand and there's a lot more countries. But if you gave the same economic situations, as afforded to other countries, then you could compete, and nobody's talking subsidy. And, as far as cargo reservation, the amount of jobs created by it might prove equitable, with the amount of cargo to be reserved to guarantee the jobs being there. That's my opinion on that.

THE CHAIRMAN: Mr. Sinclair?

MR. SINCLAIR: I think, at least in some respect, I agree with Andy Boyle. I don't think Mr. Moore was listening very closely to Ladi Pathy's remarks, where the Canadian Shipowners' Association has specifically passed a resolution that they are not in favour of cargo reservation. That's as clear and unequivocal a statement as can be made, so that's really not an issue there.

With respect to subsidy, a lot depends on your definition of a subsidy. If your definition of a subsidy encompasses a direct payment subsidy, then also the

Canadian Shipowners' Association has stated unequivocally that they're not seeking that kind of a subsidy. Neither would we in government particularly countenance it, either one of them. What the Canadian ship operator has been asking for is a fiscal regime or a tax regime that places him on a competitive basis with those he has to compete with. Most international shipping operators live in a regime where they're not subject to income tax, and so the Canadian shipping operator is saying, "Place me in that regime, or give me the equivalency, and I will compete without cargo reservation, and without direct subsidy payments." I think that should be made perfectly clear.

A Canadian flag is not necessarily the alternative. The British have a national flag fleet and they also have defensive legislation. I think, in dealing with a discrimination problem, you may have to use more than a single alternative to solve it, depending upon what the individual circumstances are, and I guess a lot of people, if they were trading into that kind of a market, would like to have an array of tools to use and not put all their eggs in the basket of a single tool.

THE CHAIRMAN: Thank you.

MR. POWELL: Jim Powell, Crown Zellerbach.

I'm prompted to comment on Mr. Boyle's remarks. I think it is fair to say that Andy and I are on the opposite sides of this question.

For a good part of your speech, I thought I was in the wrong conference. This conference was convened to discuss the implications on Canada of UNCTAD Liner Code provisions.

We got the old chestnuts about why we need a Canadian merchant marine, and I don't plan to even attempt to rebut those, because this isn't the forum, with the exception that I would like to comment on 10,000 jobs, because we've looked at this a little bit and it doesn't take an arithmetic genius to divide crew sizes by ship sizes to find out that 10,000 jobs are a major portion, or a very large share, of the world tonnage. In fact, I think the number that we found, that if every pound of Canadian exports was carried on Canadian flags, there would be something like 4,500 jobs.

I think it has been said many times at this conference that there aren't going to be too many answers today. I think if there is one thing that is clear, as a result of this conference, it's that the potential implications of UNCTAD, whatever they might be, are not a reason to develop a Canadian flag fleet.

MR. BOYLE: It wouldn't have been a conference without Crown Zellerbach coming out against Canada.

With the position just stated, I could refer to my notes but I don't have to because I have gone through this several times, I think I refer to two perspectives for Canadian deepsea fleet; the very limited and archaic one of simply viewing a ship, and people aboard, taking cargo to and from Canada, and an all-encompassing vision of what those jobs represent. It's not simply 4,500 people on a ship, or ships. You're talking about people working, that are going to have money then, and spending it within the economy, within communities. There's been countless surveys imposed to show us what the spinoff effect of what one seafarer earns aboard a ship, in respect to housing, and in the construction industry, and to buying a car, and to working within the community. Once you start taking those spinoff job effects into account, and let's start getting into ship repair and ship servicing and ship chandlers servicing ships with food, and all the other involved and related jobs in providing this deepsea fleet, I might agree that on board a ship, there is X amount of people but the amount of jobs created and maintained year-round becomes much more than 4,500. Since a lot of people are out there from business, you know the effects of spinoff jobs, for every one job created. I think at 4,500, the spinoff effect is far greater than 10,000. I was being conservative, very unlike my character.

But I think, in a nutshell, to make chestnuts chestnuts, or whatever that is, the spinoff effect of a deepsea fleet has far ranging effects than simply people on board a ship, it extends to the whole Canadian community.

You're talking about revitalizing the steel trade, that right now is in a big slump, construction of vessels possibly, with certain tax considerations from the Canadian government, an industry which is faltering in many respects. And there's thousands of jobs in shipyards that we don't have anymore.

You're talking about the technological advances on board ships, with the new computerized systems. You're talking updated ships, with computerized engine rooms. You're talking about the pilot projects that are envisioned on LNG tankers operating in the high Arctic. You're talking about the training facilities offered either through the Seafarers' International School, in Morrisburg, Ontario, or the other government schools that are going to have to be greatly expanded, to accommodate the new ships coming back. So, now you're talking teachers, as part of the spinoff effect.

So, please don't underestimate my intelligence, or the audience intelligence. I think they realize the simple fact that there's way more than 10,000 jobs we're looking at down the road, if a deepsea fleet is brought back.

And, the savings in unemployment insurance being paid out, and welfare, and people's pride and dignity, that are being lost, and what can be recouped by having these jobs put into force, is a lot greater. That's my answer to that question.

THE CHAIRMAN: I think that we probably all will recognize that the question of Canadian flag shipping is one of those window-boxes, that if it fell on your head could do considerable damage. It is one which is appropriate within the context of the UNCTAD Code and cargo sharing, but it is not one which I believe is so central to the issue that we need to try to explore it fully this afternoon.

However, if I may exercise the Chairman's prerogative, I guess, of having the mike, there is one feature of the issue associated with the environment for operating shipping out of Canada, which seems to me to be relevant, directly relevant, to the UNCTAD Code. It comes from the UNCTAD Code and it has not come up as a specific point during this discussion. That is the definition of a national shipping line. A national shipping line of any given country is a vessel operating carrier, which has its head office of management, and its effective control, in that country. While it may not be required that that national shipping line be operating Canadian flag vessels, the nature of that operation would put it under the Canadian tax regime. Of course, one of the points of argument, one of the observations made, I believe, in the paper presented by Anne Burnett, was a favourable environment, one of those features being the present difference which exists in a tax regime in Canada, as compared with overseas. So that, if a shipper is faced with a unilateral action by a foreign government, which would place, let's say 100 per cent of the Canadian trade's move on that foreign government's vessel, and that that was not satisfactory, and that the only way of bringing a Canadian controlled shipping available, was to domesticate a presently offshore service, one of the implications of that would be that the service presently provided under a foreign tax regime would move to Canada and operate under a less favourable tax regime.

I simply make that, I think, as a factual observation, and please, anybody correct me if I am wrong.

So, you cannot separate out some of the arguments about a Canadian flag merchant marine, although, as I started off by saying, there are many aspects of the marine argument, which are not relevant for the UNCTAD Code discussions.

MR. HASSE: I'm Gerhard Hasse of ACL Canada.

I'd like to ask Mr. Boyle if he suggests, and I'm looking at the infrastructure required to build ships, that Canadian labour could, or should, more importantly, supply the service that is now supplied by Korean, by Japanese, by Yugoslav and Polish labour, at their cost levels in order to make Canada competitive?

THE CHAIRMAN: Just let me interject. I hope that you can keep your response short, please.

MR. BOYLE: First of all, to address the question, you total the amount of tonnage right now owned by "Canadians", if it was to be brought home tomorrow, I'll tell you right now, we don't have the manpower readily available to man it.

I can't really speak to the question of what the shipyard workers are going to do, but, I believe with the, I'm trying to remember off the top of my head, but one of the stronger advocates vocally was a gentleman, deceased now, Mr. Papachristidis, I can remember his advising me of what it took to build a ship in Belgium, when they were giving away all the money at one per cent, and all the extra incentives that were offered to their shipyards. Now, if you're talking, if Canada can be as competitive as these other countries, offering such heavy subsidies to maintain their shipbuilding business, whether we can become competitive as a labour force, first of all, most of the shipyards would probably have to be revamped, depending on the types of vessels involved. So, unlike the American steel industry, we'd be probably the most advanced shipyards in the world, with the best technology, and the highest amount of efficiency that can be offered by a machine, so it wouldn't surprise me that we could possibly become competitive. Not speaking so much for C.S.L., but I know there is one gentleman here that can talk about one experience of one Canadian shipyard, that went through a drastic change in order to become more competitive, where they went to, I believe it was, dual-capacity jobs in the shipyard in order to maintain a steady volume of manpower, and that system proved to be effective, I believe, and it's still in operation. As an alternative, that can be looked at.

So, you're asking what appears to be a very simple question. But, based on financing, technology, present shipyards, if you're looking at modern shipyards, it becomes a whole different ballgame. But I believe

Canadians are able to compete as good as anybody else in the world for the best prices in the world, given the same foundation, and not one on sand.

THE CHAIRMAN: Mr. Pageot?

MR. PAGEOT: Thank you, Mr. Chairman.

Well, as Director of Shipping Policy with Transport Canada, evidently I find it very interesting and fascinating a discussion on deepsea and merchant marine. But that's not my intended question, which maybe I should ask to Mr. Chidiac from Massey Ferguson.

Over these two days, whether we talk under a Code scenario or shipping conferences scenario, or maybe some other variations, the issue of the Shippers' Council has been raised and probably the strength of the Shippers' Council. Under the present regime, although our good friends, Mr. Hibbeln and Jim Moore and so on do an excellent job, they have very limited financial resources.

So, the question I would like to ask is, would companies like Massey Ferguson and some of the other large companies, will they be willing to provide more financial assistance to the Shippers' Council, and if not, will shippers consider government financial assistance, based on the Australian model, as a subsidy.

MR. CHIDIAC: It's not an easy question.

You must recognize that shippers are a diverse lot. They're basically the Canadian people. They come from all sectors. They all have different interests. More than anyone, the Canadian shipper is the Canadian people. It represents, you know, the population in general.

I'm not sure in my own mind, I have to speak personally, that the Australian system is something that should be duplicated in Canada. I just had an opportunity to review it. There's still questions as to how it works. The specific function of, say, the Australian laws, basically, are not setting rate levels. It sets the total cost, and only a cost increase, or a cost surcharge. It doesn't get involved in the rate structures and the mix of products.

Again, there is a vast amount of information that, I think, you know, the government should have, and some way of finding out what you need to make a good policy decision. The costs of operating vessels is one thing they can get from the conferences. But what you have to ship where, and what's happening to it, in what size lots, is quite another question. That you can't get from a shippers' council, or from the conferences.

Now, when shipments are exported, the shipper makes an export declaration. Those declarations show vast amounts of information. It tells you what the size of this order was. It tells you how much it was worth. It tells you what product it was. It tells you the weight, and the cube, and it tells you what line it went on, where it was loaded, where it was going to. Then, on the reverse, on the imports, there's a whole vast amount of data that's being fed in. I'm saying that that's the data we really need in Canada to make policy decisions as to which is the best direction to go. I went through the data that Mr. Ray sent me, you know, it was '75 data, it was by tons, it was by country, but it was, you know, continually pointing out that we couldn't tell from the data whether these were conference ships or non-conference ships exactly. There was no breakdown by commodities. There was no breakdown by lot sizes. And that is the kind of data you need to figure out, well, how many ships do I need on this trade. I took some of that '75 data and grouped it by trade areas, and looking at the trade areas, all the cargo coming out of Canada, all of Canada, all the ports, to, say, the whole continent of Africa, and it came out to 180 tons a year, or something like that.

Well, what kind of a Canadian flag, or what one carrier could run that lane of traffic economically, to give any level of service, 180 tons, what, 20 or 30 tons, I don't know, there was nothing there to indicate how much of that was cube and how much of it was weight. You couldn't calculate how many vessels it would take. But just to say, for instance, it came to one vessel a month. Well, that means all the trade in all of Canada would have to get to one port, and move on only one vessel a month, to hit, what, about 80 ports around Africa. The numbers speak for themselves, if you get the right numbers? I think this is the kind of information we need, and I think that there are places that maybe this information can be facilitated, or gathered within what the government collects as shipments go in and out of the country. How much of that was bulk cargo, how much of it was finished goods, how much of it was really high technology goods? We don't know. That's the kind of data we need more so at this point than even the question of whether we should copy an Australian situation, which I'm not sure of. I speak for myself now.

THE CHAIRMAN: Could I just make one brief observation on Australia?

I was involved in 1977 in a review of the Australian shipping legislation, which was specifically focussed on their policy with respect to conferences, and the

functioning of the Australian Shippers' Council and the role and powers of government, and so on.

One of the reasons for that review was the dissatisfaction by Australians with the functioning of the Australian Shippers' Council. So, they did not regard, and do not regard, either the financing, or the functioning of the Australian Shippers' Council as wholly satisfactory.

So, I guess when you are dealing with difficult problems, there just isn't any panacea, and the tendency to look at fields that are far away as being very green and fertile, and with no weeds and dandelions in them, is a bit dangerous.

MR. BENNETT: My name is Gerry Bennett. I am with the Council of Forest Industries of British Columbia.

Pursuant to the question that was asked, I am also the Vice-Chairman of the Canadian Shippers' Council.

I think André threw a curve at us with that question. It's a pretty devious one, if I might say so, André.

First of all, I think it should be understood that the Canadian Shippers' Council is not a failure. I think the Canadian Shippers' Council has done a very good job. They've been very very effective and successful, given consideration to the ineffectiveness of the legislation under which they're operating. It's my personal view that the conferences have not co-operated in any way, in the providing of information or the substantiation of any charge, with the Shippers' Council. And why haven't they done it? Because they don't have to. There's nothing in the law that says they have to. They have to meet. They meet, when they're asked to by the Shippers' Council. They have to provide information that is satisfactory to the proper conduct of that meeting. Okay, what does that mean? We think that it means to lay out some numbers that justify some of their costs that they're adding on to us. They think that if they give us the formula for that calculation, that's sufficient. So that's a subject of interpretation. So, obviously it's not the Shippers' Council that's weak, it's the legislation that is ineffective. And we think that the legislation must be tightened up, give clout to the Shippers' Council, if the Shippers' Council is going to be the countervailing force to the cartel position of the shipping conferences. It's not the Shippers' Council that's weak. It's the legislation. And with this review that's going on, I think this is what the Shippers' Council is going to tell this inter-departmental committee. It's going to tell the public hearing of the Canadian Transport Commission

that the legislation itself should be tightened up to give the power back to the Council to be the counterbalance to the cartel position of the shipping conferences.

As far as money is concerned, let's see what it's going to take. Right now, there is no paid staff of the Canadian Shippers' Council. It's all voluntary. We all have other priorities. Everyone of us that's working for the Canadian Shippers' Council has a more priority job to do ... and I think the conferences take advantage of that. When we ask the conferences on the west coast to do anything, they know that we've got other things to do, and they put it aside. They say, "Look, we don't have to worry about him. He's got his other job to take care of." And surprisingly enough, and this was brought up by Graham Lochhead yesterday, the very organizations who are given this exemption from the Canadian law, to be able to get together and set their prices, you would think they would want to hang on to that, and do everything in their power to retain it. Instead of that, they're going down the other side of the road, and not showing any semblance of co-operation at all.

So, I don't know what it's going to take for a strong Shippers' Council in terms of staff or funding or money, or where it's going to come from. But, I think if we can tighten up the legislation and then decide what we're going to need to do, then we're going to start looking for funding. I don't know whether it's going to be the government that's going to do it. The thing is that John Turpin identified yesterday that there's a substantial amount of small shippers who are benefiting by this, that really don't make any contribution to it, or don't make any payment to it either.

Now, if I may go on to another subject very quickly. I have to talk to Mr. Boyle.

THE CHAIRMAN: Do you have to?

MR. BENNETT: Yes.

THE CHAIRMAN: Is it germane to the Code of Conduct?

MR. BENNETT: It's as germane to the Code of Conduct as his talk was.

THE CHAIRMAN: Why don't you talk to him after the session?

MR. BENNETT: I think it's very apropos because I think the invective and viciousness of his talk is very germane to the type of environment that we're going to have, that we can look forward to, if a Canadian merchant fleet ---

THE CHAIRMAN: I guess chairmen at these sorts of sessions don't normally rule things out of order, but since we live in the same town, and you can talk to me and throw things at me afterwards ---

MR. BENNETT: You didn't say it.

THE CHAIRMAN: Well, no, but I really don't think, looking at the problem of allocating our remaining ten minutes, that I'm doing the group or the program a service in allowing the question along those lines. Thanks very much, Gerry.

Would somebody like to respond to his earlier comments?

Oh, could I let Mr. Sinclair respond to Mr. Bennett's earlier statement, first statement?

MR. SINCLAIR: I'd just like to respond very briefly, and then to make two other comments, in case I don't get a chance before this thing ends.

I would agree with you, Gerry, that if there is going to be a Shipping Conferences Exemption Act, there has to be an effective countervail in the form of a Shippers' Council. You and I have talked about that many times in the past, and I think we agree on that. We would like, if there is going to be a Conferences Exemption Act, then there has to be an effective countervail, and the Shippers' Council has to be effective. If the Shippers' Council is having difficulty with the legislation, then we have an opportunity to do something with that. That's the only comment I'd like to make on that. But, by the same token, I guess I would have to say that, and it's unfair to say it to you because I know you think as I do, and that is, that government shouldn't be funding the Shippers' Council. The shippers feel they have a need for a Shippers' Council. My goodness, there's 10,000 shippers in this country. Surely to goodness they can fund an effective Shippers' Council without government funding. So, I can just leave it at that.

The second thing I'd like to say is that, I think Professor Heaver has brought out a major point with respect to the Code that wasn't really addressed, and I want to make sure that you clearly understand it, and that is, that with respect to the designation of a national line, and under the definition that's there under the Code, that means that that national line would be taxable in Canada, and that the present Canadian tax law, and I'm not a tax expert at the moment, but I believe the present Canadian tax law looks through some of the corporate veils and would tax the operations of that shipping company or its affiliates. I would, as evidence of that statement, remind you about the TV series on the Canadian

Establishment, and there was a clip in that series about the Chairman of CP Limited being present at the Board meeting of CP Ships in London, and immediately there was a flurry in the tax world as to whether or not CP Ships was taxable in Canada. So, that's a very important point, that the designation of a national line may not at all be as simple as some people have assumed, up to this point in time.

And finally, the last point I'd like to make, in case I don't get an opportunity, is to, on behalf of all the public servants that are here and who will have to wrestle with this problem for some time to come, to thank all of you for taking the time, the trouble, and the expense, to come here and give so freely of your advice and your opinions, to assist us. I think I could say, without fear of contradiction, that all of us from the public service who've been here for the last couple of days have benefited immeasurably by the discussion that's taken place, and that in the discussions that we'll have amongst ourselves in later months. I know that this particular seminar, and the comments, and the discussion, and the views, and the corridor talk, will be very vivid in all their minds, and no matter how the decision comes out or how the ultimate action is taken, you will have influenced that result. Thank you.

MR. BLAIKIE: Gary Blaikie, Halifax-Dartmouth Port Commission.

I have a question for Mr. Chidiac, but some other members of the panel might want to answer it.

Using Arthur Nightingale's example of Canadian trade with Brazil, the current situation, 760 million dollars Canadian exports, 1980, somewhere around a billion dollars Canadian exports presently, presumably the ocean rates on Canadian exports to Brazil have not been a deterrent to our export trade.

Secondly, the Brazilian flag services cost the national economy of Brazil money. Does Mr. Chidiac think that Canadian participation in that trade, assuming we had a defensive mechanism, would result in a cost to the Canadian public?

MR. CHIDIAC: I think the rates on those trades are fairly high. As a matter of fact, that's a conference that doesn't even have a loyalty agreement, so you can see how secure they are.

If a Canadian flag vessel was in that trade, it would just sort of balance things out. It's the same old problem. One solution doesn't fit everywhere. Like Mr. Sinclair was talking about before, you'd be best having a battery of tools.

If you look at what the U.S. does, they split the trade fifty-fifty. If there's enough Canadian trade going down there, for even 50 per cent of it to be carried in a Canadian vessel, I don't know, there's no statistic, this is the question I keep raising again and again. We need numbers.

THE CHAIRMAN: Is that right?

MR. BLAIKIE: He didn't really answer the question whether he thought it would cost the Canadian public money or not. I think we know that the U.S. flag vessels cost the American public money. Brazilian vessels, or rather Brazilian flag, or U.S. flag, certainly in cargo reservation services, tend to cost the public money. That's my question.

MR. CHIDIAC: It will cost them money, but it's an even trade.

THE CHAIRMAN: Mr. Turpin?

MR. TURPIN: John Turpin. I would like to give some comments on André Pageot's question about financing for the Canadian Shippers' Council. The comments will put me in disagreement with Gordon Sinclair.

The major companies are willing to pay for a Shippers' Council. The major companies do. The question is, should they? Is it healthy to have major companies dominating the Canadian Shippers' Council? The membership was opened up for corporate members, in order to get some revenue. Those members have to be very careful then, not to dominate the Shippers' Council. They try, but I can tell you from my experience, that that's one of the arguments used by conferences when one is trying to negotiate, discuss, consult, with them. They say, "What the hell are you doing? There's no problem with your company. So why don't you shut up and go away?" Who is going to look after the smaller shipper? And, is that not possibly a responsibility of government? Perhaps not Transport Canada, whose role is, I think, to operate, promote, an efficient transportation system. But perhaps that's the role, or a role, of Industry, Trade and Commerce. Maybe they need to lead those shippers. So, I think some small amount of government funding would be appropriate, for starters, five per cent of the C.T.C. research budget, in the first year, ten per cent in the second.

MR. SINCLAIR: I don't disagree that the small shipper needs to be represented, but, you know --- Isn't this private industry? Isn't it private industry? Why should government be funding it? If there's 10,000 shippers, maybe if they were charged a fee of 20 dollars apiece, that would more than amply fund the Canadian Shippers' Council.

I guess I have a little bit of a hangup, and it's a small amount of money, John, so it really isn't of any consequence that way. I guess it's just the principle of the thing. Why should private industry be turning to government for funding support for a private industry problem, and I guess that's a philosophical hangup.

THE CHAIRMAN: John?

MR. TURPIN: The question is, who funds government?

MR. SINCLAIR: I think that's immaterial. Now, the general taxpayer, should he also fund the Shipping Federation of Canada? Or should he fund the Dominion Marine Association? Should he fund a number of other industry associations? I think if there is a legitimate need, private industry should look after its own funding. Just a personal view.

THE CHAIRMAN: I think we have had about an hour and a half of discussion, and it seems to me that if we stop now, we've gone just about full circle, about wondering what the appropriate framework for government is.

Since we have to be out of this room by five o'clock, may I thank you all for your, and the panel, your excellent presentations, and you, for your excellent participation. I hope there aren't too many rocks.

Just before you get up and leave though, I am going to hand on for the final word to Mr. Hariton.

MR. HARITON: Yes. This is the conclusion, and I'll try to keep it brief, because Mr. Sinclair said more or less what I wanted to say.

I do want to thank the speakers today for helping us in learning new things about this topic, and, indeed, I'm learning things that I, for one, thought I did know. I'm sure that the frank exchange of views, to use the terminology of our Soviet friends, the frank exchange of views we've had these past two days will be most useful when it comes to considering Canada's position, as to the UNCTAD Code of Conduct.

On behalf of both Transport Canada and the Canadian Transport Commission, I'd like to thank all the participants who have come to the seminar. I'd also like to recognize the efforts of the staff of the Research Branch in the Commission, and of the C.M.T.A. of Transport Canada, who organized the seminar, and who put all that work in.

That you very much all.

SEMINAR REGISTRANTS

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ABBOTT, R.A.	Economist - Carrier Economics, Research Branch	Canadian Transport Commission
ABEL, W.H.	Assistant General Manager	Esso Petroleum Canada
AKSIC, A.	Vice-President	Zim Israel Navigation Company (Canada) Ltd.
ANDERSON, R.	Economist	Consumer and Corporate Affairs
ANGUS, W.D.	Partner	Stikeman, Elliott
ARCHAMBAULT, M.	Economist - International Programs, Research Branch	Canadian Transport Commission
ARES, A.A.	Chef, Service Evaluation et Orientation	Ministère des Transports du Québec
BATHURST, J.N.	Adviser (Shipping and Ports)	
BENNETT, G.E.	Vice-President, Transportation	Council of Forest Industries of British Columbia
BERNARD, C.E.	Manager & Secretary	Associated Conferences Secretariat
BLAIKIE, G.H.	Executive Director	Halifax-Dartmouth Port Commission
BOISSONNEAULT, R.	Adjoint Exécutif du Président	Logistec Corporation
BOYD, P.T.	Director	Inco Metals Company
BOYLE, A.	Executive Assistant	Seafarers International Union of Canada
BRANDER, J.R.C.	Professor of Economics	University of New Brunswick
BRENNAN, M.	Marine Deputy Administrator	Transport Canada

BRISSET, J.	Partner	Brisset, Bishop, Davidson and Davis
BROOKS, M.R.	Research Associate	Cdn. Marine Transportation Centre, Dalhousie University
BROWN, M.G.	Associate Director	Cdn. Marine Transportation Centre, Dalhousie University
BRYAN, I.A.	Professor	Ryerson Polytech. Inst.
BURHOP, K.	Manager - Dist. Div.	BASF Canada Inc.
BURNETT, A.G.	Assistant to Senior Vice-President	Federal Commerce and Navigation Ltd.
CAMU, P.	President	March Shipping Ltd.
CANGARDEL, J.-M.	Director	Union Industrielle et Maritime
CANTIN, S.	Commission Counsel	Canadian National
CARTON, J.	Chairman	Transworld Shipping Limited
CHIDIAC, J.	General Traffic Management and Customs Manager	Massey-Ferguson
CHURCH, P.R.	Marketing Manager	International Sea-Land Shipping Service
CLOUTTE, R.M.H.	Manager - Marine Costing	Domtar Inc.
CONLEY, W.M.	Associate Professor of Political Science	Acadia University
CÔTÉ, A.	Director - Merchant Shipping Branch, WTC	Canadian Transport Commission
COURTNEY, J.L.	Senior Policy Advisor	Transport Canada
CRESSWELL, P.R.	Vice-President	Algoma Central Railway
CRICHTON, J.A.	President	The Shipping Federation of Canada.
CURD, P.B.	Executive Director, WTC	Canadian Transport Commission

CURRIE, W.C.	Marketing Manager	Seabridge Int'l Shipping Inc.
DAIGLE, R.	Sr. Economist International Programs, Research Branch	Canadian Transport Commission
DAVIES, J.E.	Assistant Professor, Dept. of Economics	Acadia University
DAWSON, M.	Science, Environment and Transportation Policy Division	External Affairs Canada
DAY, D.D. Jr.	Chairman	Pacific Westbound Conference
de MANN, M.	Attorney	Stikeman, Elliott, Tamaki, Mercier & Robb.
DESGAGNÉS, R.D.	Directeur - Armement	Groupe Desgagnés Inc.
DICKSON, C.S.	General Manager	Atlantic Provinces Transportation Commission
DUBÉ, Y.	Vice-President, Research	Canadian Transport Commission
FFRENCH, R.	Professor and Head, Dept. of Economics	Acadia University
FLOWER, B.W.	Chairman	Canada-United Kingdom Freight Conference
FROSST, M.	Transportation Consultant	Avantech Informatique Inc.
FROST, J.D.	Commercial Analyst	Halifax-Dartmouth Port Commission
FURLONG, E.J.F.	Secretary	Eastern Canada/ Australia - New Zealand Conference
GIBBERD, J.	Sr. Economist - Carrier Economics, Research Branch	Canadian Transport Commission
GIRARD, J.G.	Directeur - Transport maritime et fluvial	Ministère des Transports du Québec
GORDON, W.G.	General Manager	A.C.T. (Canada)

GORICK, P.K.	Director	Manchester Liners Ltd.
GRAY, G.K.	Supervisor, Transportation and Distribution	Falconbridge Limited
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HANINK, P.		Braemar Shipping Limited
HARITON, G.	Executive Director - Research Branch	Canadian Transport Commission
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HECKS, K.	Shipping Policy Advisor, CMTA	Transport Canada
HEENEY, S.	Director - Science Environment and Transportation Policy Division	External Affairs Canada
HIBBELN, C.H.J.	Vice-President Transportation Services	Noranda Sales Corporation Limited
HIGGINBOTTOM, J.T.	Marine Manager	Alcan Smelter & Chemicals Ltd.
HILL, S.R.	Vice-President	Econolynx International
HODGSON, J.R.F.	Director - Marine Policy Coordination, CMTA	Transport Canada
JOHNSTON, B.J.J.	Assistant Secretary	Eastern Canada/ Australia - New Zealand Conference
KELCH, M.	Manager - Marine & Pipeline Office	Ontario Ministry of Transportation and Communication
KELLEY, R.L.	General Manager	Manchester Liners Ltd.
KELLY, G.D.	General Manager - North America	CP Ships

KELSO, B.F.	Director - Transport Industries Analysis, Research Branch	Canadian Transport Commission
KHOSLA, D.S.	Chief - Research	Consumer and Corporate Affairs
LATALIK, N.G.	Research Associate	Dalhousie Ocean Studies Program
LAUBERT, C.	Pricing Analyst	National Harbours Board
LEMKE, K.	Manager	Zim Israel Navigation Company (Canada) Ltd.
LOCHHEAD, I.G.	Director - Transportation Services	Industry Trade and Commerce
MacANGUS, J.L.	Director - Int'l Maritime Transport, WTC	Canadian Transport Commission
MacDOUGALL, D.J.	Director - Transportation Policy	Department of Transportation, Govt. of Nova Scotia
McBOYLE, R.G.	President	McLean Kennedy Inc.
McCAFFREY, F.D.	President	Shipping Limited
McCLUSKEY, C.H.		Kerr Steamships Ltd.
McCONNELL, J.W., Jr.		Haight, Gardner, Poor & Havens
McEWEN, W.D.	Vice-President - Traffic	Montreal Shipping Inc.
McINTOSH, B.G.	Assistant Manager - Transportation and Distribution Section	Canadian Pulp and Paper Association
McKINLEY, D.F.	Director - Research	Consumer & Corporate Affairs
McRAE, N.D.	President	Marine Underwriters Limited
McTAGUE, T.J.	General Manager	Canadian Industrial Traffic League
MALOTT, B.N.	President	Transworld Shipping Limited

MANERY, G.	Senior Policy Development Officer, CMTA	Transport Canada
METCALF, F.	Barrister	Metcalf & Holm
MONTEIRO, J.	Combines Officer	Consumer & Corporate Affairs
MONTGOMERY, D.	Secretary - Treasurer	Canadian Labour Congress
MOORE, J.D.	Secretary	Canadian Export Association
MORIN, G.	Policy Development Officer, CMTA	Transport Canada
MORSE, M.C.	Vice-President - Traffic and Operations	ACL Canada Inc.
MUELLER, W.	Manager, Transportation & Distribution, Chemicals Division	Celanese Canada Inc.
MURRAY, P.S.		CN Rail
NEUENDORFF, K.F.N.	President	Protos Shipping Ltd.
NIGHTINGALE, A.	President	Saguenay Shipping Limited
NUTT, P.G.	President	Kerr Steamships (Canada) Limited
OLSEN, K.B.	President	Maersk Line Agency (Canada) Limited
PAGEOT, A.	Director - Shipping Policy Branch, CMTA	Transport Canada
PATERSON, R.J.	Vice-President	N.M. Paterson & Sons Limited
PATHY, L.G.	President Deputy Chairman	Fednav Limited Canadian Shipowners Association
PEARSON, P.M.L.	Director - Int'l Dist. & Ports	Alberta Economic Development
PEDERSEN, K.H.	Executive Vice-President	EAC - Knutsen Line Management Trans Pacific Service

PEIPPO, D.J.	Law Faculty	McGill University
PETERSON, F.B.	Chairman	Montreal Shipping Inc.
POIRIER, J.D.		CN Rail
POWELL, J.A.	Distribution Manager	Crown Zellerbach Canada Limited
POWER, M.E.	Research Assistant	Cdn. Marine Transportation Centre
RATTRAY, W.C.	Vice-President	N.M. Patterson & Sons Quebec Limited
RAY, A.	Chief - Carrier Economics, Research Branch	Canadian Transport Commission
ROBERGE, G.		
ROMOFF, H.M.	Managing Director - Container Services Div.	CP Ships
RUSSELL, P.N.	Operations Manager	Star Shipping (Canada) Ltd.
SAARTY, A.D.	Director - MMEB/WTC	Canadian Transport Commission
SALMON, S.D.	Manager - Marine Transportation & Distribution	Domtar Inc.
SALWAY, P.		Misener Transportation
SCHEIBMAYR, M.J.	Manager - Transp. Serv.	National Sea Products Ltd.
SCHUTHE, G.M.	Resident Representative	Montreal Shipping Inc.
SHAW, G.C.	Professor	York University
SHEPHERD, W.H.	Chief, Int'l Shipping Division, WTC	Canadian Transport Commission
SINCLAIR, G.M.	Administrator, CMTA	Transport Canada
SKINNER, G.	Economic Development Division	Dept. of Finance
SLETMO, G.K.	Professor	École des Hautes études commerciales

STEVENS, R.C.	Executive Director	Chamber of Shipping of British Columbia
STONE, A.J., (Q.C.)		McTaggart, Stone, Winters & Herridge
SULLIVAN, D.J.	Research & Development Officer	Canada - United Kingdom Freight Conference
TARDIF, J.M.	Advocate	Lafleur, Brown, de Grandpré
TAYLOR, R.B.	Manager Transportation	The Canadian Manufacturers' Association
TETLEY, W., (Q.C.)	Professor of Maritime Law	McGill University
THOM, J.L.	President	Montreal Shipping Inc.
TICE, J.B.	General Manager	Empire Stevedoring Co. Ltd.
TIMBRELL, R.W.	President	Dominion Marine Association
TINGLEY, R.J.	President & General Manager	CN Marine Inc.
TOPOROWSKI, R.J.	Manager, Overseas Transportation	MacMillan Bloedel Limited
TURPIN, J.	Vice-President & General Manager	Canadian Transport Company Limited
WARD, L.J.	Senior Policy Advisor, WTC	Canadian Transport Commission
WILLIAMS, D.M.	Chairman	Westward Shipping Limited
ZAHRADNITZKY, G.	Sr. Economic Advisor, Shipping Policy Branch, CMTA	Transport Canada

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